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**Interpreting Global Statistics on Resettlement of Refugees through the Lens of Critical
Race Theory: A Consideration of Canada**

By

Aituaje Aizenobie

A Thesis

Submitted to the Faculty of Graduate Studies
through the Faculty of Law
in Partial Fulfillment of the Requirements for
the Degree of Master of Laws
at the University of Windsor

Windsor, Ontario, Canada

2019

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**Interpreting Global Statistics on Resettlement of Refugees through the Lens of Critical
Race Theory: A Consideration of Canada**

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DECLARATION OF ORIGINALITY

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ABSTRACT

This thesis critically explores global statistics on resettlement of refugees through the lens of Critical Race Theory (CRT). There has been substantial research focused on various aspects of the resettlement process and ancillary procedures; yielding insight into different aspects of the demographics of resettled refugees to various third countries. The current research is however lacking an important element relating to the racial demographics of resettled refugees. It is the intention of this research to address this gap. This research uses doctrinal legal research methodology in analyzing the historical and current trends inherent in the global resettlement process. It also analyzes collated statistical data provided by the United Nations Refugee Agency (UNHCR). In assuming the CRT standpoint, this thesis argues that there is global systemic anti-Black discrimination within the group of refugees shortlisted for resettlement. This had negatively affected Black refugees deemed eligible for resettlement in the past and the quotas that were ascribed to them. This thesis further argues that this prejudiced practice has still not changed much in recent times. In challenging historical and current trends, this research hopes to encourage UNHCR, national decision makers and other practitioners involved in the resettlement of refugees to begin to think more about their inherent racial biases – whether intentional or otherwise – in facilitating and making those important resettlement decisions.

DEDICATION

This thesis is dedicated to social justice advocates all over the world. These people go the extra distance to bridge inequality gaps within the spaces they find themselves. Thank you all, for reinforcing my belief in humanity.

ACKNOWLEDGEMENTS

A popular African adage says that: “It takes a village to raise a child.” This implies that there are usually many contributions to any success story. I found a wonderful ‘village’ of support here at the Windsor Law School. I will be most ungrateful if I fail to acknowledge the numerous help that has culminated in this thesis - especially those who worked behind the scene.

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To Professor Laverne Jacobs, I will always be indebted to you. You have indeed been a great mentor. Thank you for the periodic meetings and prompt email responses not only in relation to my LLM program, but other personal issues I had that may have adversely impacted my performance in the program. Your wealth of suggestions and advice made all the difference. To Professor William Conklin, please accept my gratitude for teaching me about critical thinking. I must confess that this was not evident to me at the time I was taking your Legal Theory course. My approach to this research has been hinged on that foundation you provided.

To Ms. Laura Little, thank you for listening to me when I was at my lowest point. You are simply amazing.

To the Paul Martin Law Library team, you have been truly phenomenal. I appreciate your Christmas gift to me and my family shortly after I started this LLM program in 2017. In these last two years, I have spent most of my days in the library. Within this period, all three librarians and staff have made an input in one way or the other, in the culmination of my thesis. You all helped make the library a second home to me, and I am so grateful. To Annette Demers, you have been there for me and my family right from my very first week here at Windsor Law. You epitomize true friendship and professionalism in the best of ways. I am humbled to know you.

To all members of the Windsor Law School community, thank you for taking a chance on me. You did not only admit me into the LLM program, you most importantly provided me with all the necessary resources to ensure that I succeeded as well. In a special way, I want to extend my profound gratitude to the Windsor Law School for the very generous funding I received. It was pivotal to keeping me in the program.

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Finally, I want to say thank you to my husband, Peter and our four wonderful children, Michael, Gabriel, Ire and Ese. You have all been with me through it all. I am nothing without my beautiful family. You are my world.

LIMITATIONS

To qualify for resettlement, people must normally be deemed to be refugees in their countries of first asylum. Refugee claimants (otherwise referred to as asylum seekers) are those who have yet to successfully go through the refugee determination process. Since they are usually not included in resettlement considerations, they are also excluded from this research. Also excluded from this research are internally displaced persons (IDPs). Resettlement is a protection tool specifically provided to refugees. A prerequisite for refugee status is that the people must be outside their countries of nationality or habitual residence.¹ Since IDPs are still within the boundaries of their home countries, they are therefore excluded by the *Refugee Convention's* definition of refugees.

Since refugee numbers change daily, this thesis therefore relies on figures that are available as at June 20, 2019.

¹ *Convention Relating to the Status of Refugees*, 28 July 1951; Can TS 1969 No 6; 189 UNTS 137, (entered into force 22 April 1954, accession by Canada 4 June 1969); online: <<https://www.unhcr.org/3b66c2aa10>> Article 1(2) [*Refugee Convention*].

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LIST OF ABBREVIATIONS

ATCR – Annual Tripartite Consultations on Resettlement

BVOR – Blended Visa Office Referred Program

CLS – Critical Legal Studies

CRT – Critical Race Theory

CSIS – Canadian Security Intelligence Service

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination

ICTR – International Criminal Tribunal for Rwanda

IDPs – Internally Displaced Persons

IOM – International Organization for Migration

IRCC – Immigration, Refugees, Citizens Canada

GAR – Government Assisted Refugee Program

IRPA – Immigration and Refugee Protection Act

NCFR – National Commission for Refugees (Nigeria)

NGOs – Non-Governmental Organizations

PGRN – Projected Global Resettlement Needs

PSR – Private Sponsorship of Refugees Program

SCG – Syria Core Group

UN – United Nations

UNHCR– United Nations High Commissioner for Refugees (popularly referred to as the United Nations Refugee Agency)

US/ USA – United States/ United States of America

WGR – Working Group on Resettlement

PROLOGUE

“I concede that I am black. I do not apologize for that obvious fact. I take rational pride in my heritage, just as most other ethnics take pride in theirs. However, that one is black does not mean, ipso facto, that he is anti-white; no more than being Jewish implies being anti-Catholic, or being Catholic implies being anti-Protestant.”¹

That I am a black woman is not in doubt. I was born and raised in Nigeria to educated middle-class parents. I had a somewhat comfortable childhood. With the economic downturn in my early teenage years, however, life became quite difficult. The major sustaining factor that kept my family through the difficult times was the earlier training my parents had given to me and my siblings to be content with whatever we had. I realized early enough that, contentment had nothing to do with affluence but the state of mind of the individual. I learnt early to embrace contentment even in abject need.

Growing up, I was unsure of a career path that appealed to me. As was typical in my home country at the time, very few professions mattered: medicine, engineering and law. I was the ‘doctor in the house’; readily reaching out for the first aid supplies in the event of anyone getting hurt. Since I did well in my science subjects, my parents felt I was a potential doctor. Later events proved otherwise. Although still unsure of a career path, one thing that remained certain was that I was passionate about making a difference in the lives of the downtrodden. In my parents’ wisdom, law became the next best thing. For me, this was wonderful; considering my fascination with law-based television series at the time.

I entered the law school with ideal dreams. I spent the next six years of my life giving my all to attain a law degree. I got called to the Nigerian Bar. Despite the numerous law courses I was privileged to take in fulfilling the requirements of the Bachelor of Laws (LLB) degree,

¹*Commonwealth of Pennsylvania v Local Union 542, International Union of Operating Engineers*, [1974] 388 F Supp 155 at 163 (E.D.) (U.S. Federal Judge Leon Higginbotham, while refusing to disqualify himself from hearing the case).

immigration and refugee law courses were not included. The Law School had no such courses. This was quite understandable. Nigerians (like me) were (and are still) the ones leaving the country. The reverse was hardly ever the case.

In my childhood, when the oil-rich Nigerian economy was flourishing, foreigners of other races, who flocked to Nigeria to live, came with privilege and superiority. They were never refugees. When the economic tide of the country changed, these migrants quickly relocated as well.

In my many years of law practice post-call-to-the-Bar, immigration-related issues were almost non-existent. Years afterwards, and by the interplay of certain circumstances, I was offered a very rare opportunity to work as a Refugee Status Determination (RSD) Officer on a joint project between the National Commission for Refugees and the United Nations Refugee Agency (NCFR/UNHCR) in Lagos-Nigeria. I was at first amazed that there were actually refugees in Nigeria. I was totally ignorant of this branch of law. Luckily, I attended extensive trainings and workshops organized by UNHCR. These opened my eyes to the law and the workings of this branch of law in actual practice. In addition, this job opened up a whole new world to me. I saw another perspective of people at the receiving end of a power relationship. It awakened in me emotions I never knew I possessed. Suffice it to say that refugee related matters have since become very personal to me. Refugees are people with different personal stories. Some are so gruesome to listen to. Consequently, these stories challenge the depths of human compassion. I find it particularly sad that refugees are many times categorized as the objects of scorn.

I have never fit the profile of the ideal activist. I was raised in a culture of silence. It was a higher virtue to absorb vitriolic statements and acts, just to maintain peaceful coexistence. That quality was important to be deemed ‘the ideal woman’ who I had hoped to become someday. After reading the book *Critical Race Theory: An Introduction* ² in the summer of 2018, coupled with the social justice theme that I have been practically immersed in since I started my Master of Laws program, I began to question that persona I had cultivated my entire life. A better strategy for me today is to objectively call attention to racial discrimination and not just live in denial that it does exist. Silence is not always golden. Patricia Williams aptly refers to this my former state of mind as the “psychology of denial.”³

I hope that with this thesis, all stakeholders of goodwill concerned with resettlement will accept the existence of the problem and collectively join hands to fight all forms of racial discrimination and injustice.

It is further hoped that this research will shed some light on a part of the refugee story. This should bring some greater understanding to policy makers in the various States, UNHCR personnel and other stakeholders, that Black refugee groups are currently disadvantaged in the global resettlement allocations. These stakes are already so high due to the very limited resettlement spaces available globally, without including racial considerations over which no one has any control.

² Richard Delgado & Jean Stefancic, *Critical Race Theory: An Introduction* 3rd ed (New York: New York University Press, 2017) [Delgado & Stefancic, *CRT*].

³ Patricia J. Williams, *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 2001) at 24.

CHAPTER 1: INTRODUCTION

“Law and order exist for the purpose of establishing Justice and...when they fail in this purpose; they become the dangerously structured dams that block the flow of social progress”¹

It is common knowledge that the current global refugee numbers have reached staggering proportions; far and beyond the numbers recorded at the end of the Second World War. There are currently many countries embroiled in one form of armed conflict or another. Some other countries are on the verge of breaking out into full blown armed conflict. In yet some other countries, autocratic and corrupt governments are committing many atrocities against their own citizenry. The obvious outcome of these situations is that there is a massive exodus of people from their countries of nationality. Refugees are a subset of these varied migrant groups. Suffice it to say that all refugees are migrants; however, not all migrants are refugees.

The United Nations High Commissioner for Refugees (UNHCR), also known as the United Nations Refugee Agency, has as one of its primary mandates to find permanent solutions to the global refugee problem.² To this end, UNHCR touts the three widely-accepted durable solutions of return (also referred to as voluntary repatriation), local integration and resettlement.³ When refugees at any point while in the countries of refuge decide and actually go back to their countries of nationality, they are said to have returned or voluntarily repatriated to their home countries.

Local integration exists when a country hosting refugees decides to allow the refugees already in its territory to remain in the country on a more permanent basis. In addition, the

¹ Carol A. Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood Publishing, 1999) at 14 (quoting Martin Luther King Jr. - 1963).

² *Statute of the Office of the United Nations High Commissioner for Refugees*, GA Res. 428(V), UN GAOR 5th Sess., U.N. Doc A/RES/428(V) (1950) 46; *Implementing Actions Proposed by the United Nations High Commissioner for Refugees*, GA Res. 58/153, UN GAOR 58th Sess., Supp. 49, U.N. Doc A/RES/58/153 (2003) 363 at para 2.

³ *Refugee Convention supra* note 1 at Article 1C.

country takes the desired steps to get the refugees legally, economically and socially integrated into that country of refuge.⁴

The third durable solution, which is the focus of this research, deals with cases where it becomes obvious that the refugees cannot return to their home countries; and cannot be locally integrated in the host countries due to special vulnerabilities and other identified gaps in protection needs. In these circumstances, these refugees are assessed and approved for resettlement to any third countries willing to accept them on a permanent basis.

Statement of Problem

With my firsthand experience working with refugees and research into available literature, it became evident to me that refugees have very little or no agency in the resettlement process. When they are selected for resettlement to a specific country, the only agency available to them is to refuse to go to the exact country that has been selected for them. In examining the available resettlement statistics, I decided to focus on specific racial dynamics at play in the resettlement quotas. Why does it appear that some refugee groups are often preferred for resettlement while others, such as Black refugees, are often disfavoured?

Hypothesis and Rationale

The hypothesis of this research is hinged on the fact that most resettlement countries are in the Global North comprising North America, Europe and Oceania. In many of these countries, racial discrimination against Black people has been significant at some point in their individual histories. Many of these States have at one time or the other, actively taken steps to keep Black people out of their countries. Are vestiges of this racial discrimination still in existence today?

⁴ *Refugee Convention supra* note 1 at Article 1C(3).

Since resettlement States have 100% autonomy in choosing the refugees they wish to resettle, would the statistics reflect any anti-Black discrimination?

Seeking to answer this question, it was imperative to turn to UNHCR for verifiable and objective data. In furtherance of its mandate, capacity and global reach, the agency also has fulltime statisticians working in its employment on a global scale. This research brings together the relevant literature on the topic and the credible and relevant statistics in the form of the individual country chapters of the resettlement countries as released by UNHCR, for analysis and evaluation.

Research Methodology/Theoretical Framework

This thesis uses doctrinal legal research methodology. This methodology is complemented by quantitative analysis of resettlement data as provided by UNHCR. Put together, they both give a fuller picture in response to the research question.

This research also assumes the lens of Critical Race Theory (CRT) in attempting to extend the discussion raised by the research question. This theory will be further explored in the second chapter.

Outline

The second and third chapters are literature review sections of this thesis. They both portray my understanding of the relevant literatures on the two important topics of interest to this research, namely: Critical Race Theory; and the resettlement of refugees.

Chapter Two elucidates the theoretical framework of Critical Race Theory (CRT) with emphasis on anti-Black racism. It explains the concepts of race and racial discrimination. It gives a historical foundation of anti-Black racism in the Global North which started with the slavery of

Black people originally from Africa. This history of slavery of Blacks is not shared with any other racialized group. The two largest refugee producing regions of the world in contemporary times are Africa and the Middle East. This chapter lays the foundation for explaining how this history may currently affect the global resettlement numbers.

Chapter Two further highlights the major canons of CRT from the standpoint of leading critical race scholars like Derrick Bell, Kimberle Crenshaw, Patricia Williams and Richard Delgado. It also explains anti-Black racism in Canada from the perspective of Barrington Walker and Carol Aylward. The chapter contextualizes pertinent issues of anti-Black racism even in contemporary times, such as racial profiling. It concludes by showing how some Canadian courts have addressed issues relating to anti-Black racism.

Chapter Three centres on resettlement of refugees. It explains the vital role of UNHCR in the resettlement process. It begins by defining resettlement. It explains the historical foundation of resettlement and highlights the major resettlement agencies. This third chapter also explains the global standards refugees are required to satisfy before they are selected for resettlement. The chapter further elucidates on the several resettlement pathways offered by Canada in comparison to other resettlement countries of the world. These different and innovative pathways have increased the racial diversity of refugees resettled by Canada every year. Significantly, this places Canada in a leadership position when compared with other resettlement countries.

Chapter Four presents current global statistics on resettlement from the Country Chapters of resettlement countries. It describes how the relevant data was collated and processed. It analyzes the key indicators brought to light by the way countries allocate their resettlement quotas to the different regions of the world. The statistical findings show some obvious

imbalance to in favour of other refugee populations which are not Black. Are these results suggestive of anti-Black racism? This chapter finally considers other plausible factors that may also explain some of the inherent trends in the statistical findings as well.

In the fifth and concluding chapter, this thesis synchronizes the assertions emphasized in both chapters of the literature review with the quantitative findings in the fourth chapter. It argues that Black refugees are by inference disadvantaged in the global resettlement quotas as they currently stand. This chapter reiterates the important role of the United Nations (UN) as the chief custodian of all the important international anti-discriminatory multilateral treaties. It challenges UNHCR, as the arm of the UN mandated to handle most refugee related problems, to also look inwards. The Agency could adopt more transparently inclusive resettlement policies and protocols in carrying out its mandate. UNHCR can do this by building on its great global influence with resettlement countries and global partners, as it diplomatically engages with them to guide its future practices.

Finally, this concluding chapter proposes revisions to the international refugee resettlement system in order to encourage diversity and inclusion of all refugees. Just as the popular legal maxim states, “not only must Justice be done; it must also be seen to be done.”⁵ The resettlement process therefore needs to be more transparent in the manner its global quotas are administered.

⁵ *R v. Sussex Justices, ex parte McCarthy* [1924] 1 KB 256 at 259.

CHAPTER 2: LITERATURE REVIEW- CRITICAL RACE THEORY

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”¹

There is no universally accepted definition of the term race. The origin of the word and the many ensuing debates concerning that term have evolved over the years. For the purpose of this thesis, race is defined as “a grouping of humans based on shared physical or social qualities into categories generally viewed as distinct by society.”² In *The Prosecutor v Akayesu*,³ the International Criminal Tribunal for Rwanda (ICTR) defined a racial group as one that is “based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors.”⁴ Race is therefore only a socially created construct. Society categorizes people based on certain features to attribute them to a certain race. Many racial attributes are also based on geographical origins and ancestry. There is now clear and distinct consensus in the biological and social sciences that there is no evidence to support any form of superiority or otherwise as a result of race.⁵ All people irrespective of race have been proven to be 99.9% genetically the same.⁶ Defining race, therefore, has absolutely nothing to do with science.

¹ Martin Luther King Jr., *Letter from Birmingham Jail* online: <<https://www.goodreads.com/quotes/631479-injustice-anywhere-is-a-threat-to-justice-everywhere-we-are>>.

² John Barnshaw, “Race” in Richard T. Schaefer, ed, *Encyclopedia of Race, Ethnicity, and Society*, Vol 1 (SAGE Publications, 2008) at 1019.

³ (1998) ICRT-96-4-T, online: <<http://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgements/en/980902.pdf>>.

⁴ *Ibid* at para 514.

⁵ Vivian Chou, “How Science and Genetics are reshaping the Race Debate of the 21st Century” (17 April 2017), online: <<http://sitn.hms.harvard.edu/flash/2017/science-genetics-reshaping-race-debate-21st-century/>>.

⁶ Roger Highfield, “DNA Survey Finds all Humans 99.9 pc the same” *The Telegraph* (20 December 2002), online: <<https://www.telegraph.co.uk/news/worldnews/northamerica/usa/1416706/DNA-survey-finds-all-humans-are-99.9pc-the-same.html>>.

It is important to draw a distinction between race and ethnicity. According to ICTR, ethnicity is a group “whose members share a common language or culture.”⁷ The above definitions show that an ethnic group is a subset of a racial group. Several ethnic groups therefore exist within a particular race. Today, when race is discussed, it is common to refer to groups such as Black, Brown, White, Indigenous, Asian, Latino/a, or Hispanic. There are several other people in the margins and intersections of these various racial groups that struggle with their racial identities. Some people may also self-identify with a particular racial group whereas ‘society’ seems to place them in an entirely different group. All these go to show the subjectivity inherent in the racial discourse.

Colonialism as a Precursor to Race Categories

Historically, Europe is home to white supremacist structures. These structures were created at the onset of colonialism. They originated when western European colonial masters decided to explore uncharted territories of the world in the 1400s.⁸ They violently conquered vast regions of foreign lands and appropriated the wealth of these territories. The world-renowned Nigerian poet and novelist, Chinua Achebe, tells the spellbinding story of colonialism of his Eastern Nigeria community in his epic novel “Things Fall Apart.”⁹ He details how the English successfully employed many guises to subject his people to colonial rule. These included the introduction of Christianity, western education, coupled with the application of violent force. This violence was manifested through the use of guns, court systems and laws that were unilaterally made and imposed on the people. All these helped subjugate the Indigenous people on their land. Achebe’s narration of imperial-colonialism from an Indigenous Igbo perspective is similar to almost all the other territories of the world that experienced colonial rule.

⁷ *Akayesu*, *supra* note 3 at para 513.

⁸ Derrick Bell, *Race, Racism and American Law* 5th ed (New York: Aspen Publishers, 2004) at 2.

⁹ Chinua Achebe, *Things Fall Apart* (New York: Astor-Honor Inc., 1959).

After the Europeans established themselves on these foreign territories, they needed to establish that they were different from the Indigenous inhabitants; whose complexions differed considerably from their own. These people with ‘non-white’ skin tones, needed to be categorized differently to signify that they were inferior. After all, everything and everyone considered Black epitomized evil. As Achebe puts it in his character of Reverend James Smith, “He saw things as black and white. And black was evil. He saw the world as a battlefield in which the children of light were locked in mortal conflict with the sons of darkness.”¹⁰ Imperial-colonialism was established. The white supremacist structures were concretized. Slavery of Black people took root. Black people of the African continent were shackled and forcefully taken from their homelands to work as slaves in Europe and North America. Anti-Black racism became normalized.

Slavery is the origin of Blacks all over the Global North. People from other parts of the Global South were never slaves. This subjugation of Blacks was ingrained in the minds and hearts of non-racialized people. Societies and systems in the Global North were designed with this deep-seated mindset of anti-Black racism.

The historical slavery of Black people is an uncomfortable topic in many parts of the Global North. Many people would rather prefer the starting point for racial discussions as the “Civil Rights Movements in the United States, or the Notting Hill riots in the United Kingdom.”¹¹ Such people express views such as “letting bygones be bygones.”¹² This suggested approach only leads to half-truths which serve little purpose. The facts need to be told however ugly they appear. The fuller any historical narrative is, the better informed people generally

¹⁰ *Ibid* at 190.

¹¹ Patricia J. Williams, *Seeing a Colour-Blind Future: The Paradox of Race* (London, UK: Virago Press, 1997) at 11 [*Colour Blind Future*].

¹² *Ibid*.

become. “For better or worse, our customs and laws, our culture and society are sustained by the myths we embrace, the stories we recirculate, what we behold.”¹³ It is therefore imperative that truths are not masked.

Anti-Black Racism in the Global North

At the end of European colonial rule in most parts of the world, and the abolishment of intergenerational slavery, vast numbers of Black people were already dispersed all over Europe and North America. Anti-Black racism in the Global North had been the norm for centuries. This thesis argues that law has been instrumental in the creation of race and the perpetuation of racial stereotyping at all levels. The law has often used race as a means to exclude people of colour with the aim of maintaining white dominance in many societies. Williams defines whiteness simply as the “absence of colour.”¹⁴ People outside the boundary of ‘whiteness’ are termed racialized. In this sense race is:

treated as though it were some sort of genetic leprosy or a biological train wreck. Those who privilege themselves as Un-raced – usually but not always those who are white – are always anxiously maintaining that it does not matter even as they are quite busy feeling pity, no less, and thankful to God for their great luck in having been spared so intolerable an affliction.¹⁵

These same people, according to Williams, liken race matters to those involving sex and scandal.¹⁶ Race is “treated as though it were an especially delicate category of social infirmity – so called – like extreme obesity or disfigurement.”¹⁷

Since the abolishment of slavery, certain laws were abrogated entirely to reflect the new social order. Although these changes signify a progression towards racial equality, anti-Black racism still subsists.

¹³ *Ibid* at 14.

¹⁴ *Ibid* at 4.

¹⁵ *Ibid* at 7.

¹⁶ *Ibid* at 6.

¹⁷ *Ibid*.

After the Second World War, under the auspices of the United Nations (UN), the *International Convention on the Elimination of All Forms of Racial Discrimination* ¹⁸(ICERD) was signed and ratified by 179 States across the world. This treaty makes specific provisions upholding equality for all persons; promoting understanding across all racial divides; and banishing all forms of racial discrimination amongst all peoples of the world. This treaty echoes the sentiments of other UN multilateral treaties such as the *Universal Declaration of Human Rights*,¹⁹ which states that “all human beings are born free and equal in dignity and rights;”²⁰ the *International Covenant on Economic, Social and Cultural Rights*,²¹ and the *International Covenant on Civil and Political Rights*.²² These treaties have also been domesticated as various States’ legislation. Despite the popular acceptance of the ICERD and other treaties by States, racial discrimination continues to exist. According to Niessen and Chopin, the European continent as recent as the 1990s, witnessed an exponential rise in racially motivated discrimination against refugees. European governments made conscious efforts to restrict the admitting refugees and among other refugees.²³ It was against this backdrop of racial hostilities, that the Vienna Summit was convened by European heads of government in October 1993.²⁴ This summit led to grand resolutions to effectively fight racism and xenophobia.²⁵ It must be noted that most resettlement countries today are in Europe.

¹⁸ *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966; Can TS 1970 No 28; 660 UNTS 195 (entered into force 4 January 1969, signed by Canada 24 August 1966 & ratified 14 October 1970).

¹⁹ *Universal Declaration of Human Rights*, GA Res 217A (III) UN GAOR, 3rd Sess, Supp 13, UN Doc A/811 (1948) 1.

²⁰ *Ibid* at Art 1.

²¹ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966; Can TS 1976 No 46; 993 UNTS 3 (entered into force 3 January 1976, accession by Canada 19 May 1976).

²² *International Covenant on Civil and Political Rights*, 16 December 1966 Can TS 1976 No 47; 999 UNTS 171 (entered into force 23 March 1976, accession by Canada 19 May 1976).

²³ Jan Niessen & Isabelle Chopin eds, *The Development of Legal Instruments to Combat Racism in a Diverse Europe* (Leiden, Netherlands: Martinus Nijhoff Publishers, 2004) vii.

²⁴ *Ibid*.

²⁵ *Ibid*.

In understanding discrimination, Greenawalt, writing in the 1980s, acknowledges that “many questions about discrimination introduce a powerful note of reality.”²⁶ He defines discrimination simply as where “one group of people is treated worse than another...That a difference of treatment is to the disadvantage of members of some group.”²⁷ Generally, Black people are at the disadvantaged end of such discriminatory actions. According to Bell, anti-Black racial discrimination meant that “Black people need to be twice as good to get half as much.”²⁸ “Black rights, black interests, black property, even black lives are expendable whenever their sacrifice will further or sustain white needs or preferences.”²⁹ Vizkeley distinguishes between ‘direct discrimination’ and ‘adverse effect discrimination.’ In the case of adverse effect discrimination, she opines that “it is much more common to find unequal treatment in covert form lying behind a camouflage of pretext...It is in its silence towards one particular factor that this definition is the most eloquent.”³⁰ “Today, discrimination persists in forms more difficult to discern such as stereotypes, assumptions and singular viewpoints. It manifests itself as systems, practices, policies, and laws that appear neutral, but that, under closer inspection, have serious detrimental consequences for members of ethnic and racial communities.”³¹ Racism is still evident today under different guises. There are people who hold white supremacist or white nationalist ideologies. The recent violent attack that claimed the lives of 51³² people at the two

²⁶ Kent Greenawalt, *Discrimination and Reverse Discrimination* (New York: Alfred A. Knopf Inc., 1983) at Preface viii.

²⁷ *Ibid* at 16.

²⁸ Richard Delgado & Jean Stefancic eds, “Introduction” *The Derrick Bell Reader* (New York: New York University Press, 2005) at 3.

²⁹ Derrick Bell, “The Chronicle of the Space Traders” in Richard Delgado & Jean Stefancic, eds, *The Derrick Bell Reader* (New York: New York University Press, 2005) at 64 [*Derrick Bell Reader*].

³⁰ Beatrice Vizkeley, *Proving Discrimination in Canada* (Toronto: Carswell, 1987) at 60.

³¹ Christina Sampogna, Sharon Harper & Karen Rudner, “Historical Overview and Introduction” in Errol P. Mendes, *Racial Discrimination: Law and Practice* (Scarborough, Ontario: Carswell, 1997 (Release 2)) at 1-1.

³² Charlottes Graham-McLay, “Death Toll in New Zealand Mosque Shootings Rises to 51” *The New York Times* (2 May 2019), online: <<https://www.nytimes.com/2019/05/02/world/asia/new-zealand-attack-death-toll.html>>.

mosques in Christchurch, New Zealand,³³ by an acclaimed white supremacist, readily attests to this. The offence of the dead people, and the many others with varying degrees of injuries from the attack, stem largely from one or a combination of the following: that they originally came to New Zealand as refugees; that they are people of colour; or that they practice Islam, which is a historically foreign religion to that country.

Anti-Black Racism in North America

Anti-Black racism was not limited to the European continent. It extended and laid deep roots in North America as well. In the US, Derrick Bell says racial discrimination against Black people is “the manifestation of deeply entrenched determination of the unavoidable truth that this nation’s [USA] social stability is built on a belief in and a determination to maintain white dominance.”³⁴ Bell says further that “racial discrimination has placed and continues to place a heavy burden on all Black people in th[at] country. A major function of racial discrimination is to...deny us access to benefits and opportunities that would otherwise be available.”³⁵ He goes further to say that throughout the history of Black people in the US:

“whites of widely varying socio-economic status have employed deeply set beliefs in white supremacy as a catalyst to negotiate and resolve policy differences, often through compromises that sacrifice the rights of Blacks...Whites who lack wealth and power are sustained in their sense of racial superiority and thus rendered more willing to accept their lesser share by an unspoken but no less certain property right in their whiteness.”³⁶

³³ Ben Westcott et al, “Dozens Killed in Christchurch Mosque Attack” *CNN* (16 March 2019), online: <https://www.cnn.com/asia/live-news/new-zealand-christchurch-shooting-intl/index.html>; “New Zealand’s Day of Mourning for Christchurch in Pictures” *The Guardian* (22 March 2019), online: <https://www.theguardian.com/world/gallery/2019/mar/22/new-zealand-day-of-mourning-for-christchurch-in-pictures>.

³⁴ Derrick Bell, “The Racial Preference Licensing Act” in Delgado & Stefancic, eds, *Derrick Bell Reader*, *supra* note 29 at 52.

³⁵ Derrick Bell, “White Superiority in America: Its Legal Legacy, Its Economic Costs” in Delgado & Stefancic, eds, *Derrick Bell Reader*, *supra* note 29 at 27.

³⁶ *Ibid* at 29.

Aylward draws a nexus between the United States (US) and Canada. She writes about how the instrumentality of the law has been historically used to perpetuate anti-Black racism in both countries. To describe this, she uses terms such as the “disenfranchisement of Black Canadians”³⁷ and “subtle and not-so-subtle forms of discrimination perpetuated by law.”³⁸ Aylward attributes anti-Black racism in the US and Canada to the shared and similar settler colonial histories of both countries. She states that race has remained a powerful concept in both countries; although many Canadians would rather deny that any systemic anti-Black racism ever existed or still exists in Canada. She disputes this supposition by declaring that “the fact remains that Canadian history, legal and non-legal, does not support such denials.”³⁹ Aylward quotes the Commissioners of the Ontario Criminal Justice System, who noted the long history of racism in Canada by saying that: “European empires of the 16th and 17th centuries used racial difference to justify exploitations of the people, land and resources of other societies...The imperial powers also used these meanings to justify enslaving African peoples and transporting them to the Americas.”⁴⁰ For Aylward, the effects of the slavery of Black people in both the US and Canada also meant that anti-Black racism became entrenched in Canadian history as well. In 1995, the Commission on Systemic Racism in the Ontario Criminal Justice System, just like similar bodies of inquiry concluded that: “the practices of the criminal justice system tolerate racialization.”⁴¹ It has been proven repeatedly that Black people have been specifically targeted with different highhanded standards applied to them which did not apply to their White counterparts.

Another similarity of anti-Black racism in both Canada and the US according to Aylward, is manifested in the presence of all-white juries and the under-representation of Black judges and

³⁷ Carol A. Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood Publishing, 1999) at 14.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid* at 14-15.

⁴¹ *Ibid* at 15.

lawyers.⁴² Aylward attests to the fact that the criminal justice systems in both Canada and the US are largely culpable in anti-Black racism. She also says that the criminal justice system is not the only culprit because all other branches of law are equally culpable. “Whether it is criminal law, family law, constitutional law or other areas of civil law in procedure and interpretation- has been and to varying degrees, continues to be an instrument that contributes and maintains racial inequalities, divisions and tensions in both Canada and the United States.”⁴³

Aylward however draws a distinction between the ways the US and Canada tried to grant legal protection to its Black citizens through legal channels. These included amending relevant portions of the constitution⁴⁴ and other statutory mechanisms.⁴⁵ These changes in laws empowered Black litigants to formally challenge racial discrimination in the courts. Similar legal machineries were however, largely absent in Canada.⁴⁶ Aylward, citing from James Walker’s book,⁴⁷ states that Black Canadians faced similar racial discrimination on many fronts such as “exclusion from juries, segregation in public housing, voting, education, public transportation, churches, jobs, policing and so on.”⁴⁸ There was no formal mechanism for seeking redress.

In Canada, it was not until 1960 that the federal government passed the *Bill of Rights Act*.⁴⁹ This granted some quasi-constitutional rights to racialized Canadians to address issues

⁴² *Ibid.*

⁴³ *Ibid* at 15-16.

⁴⁴ The Thirteenth Amendment to the US Constitution abolished slavery. It was passed on 31 January 1865 and ratified on 6 December, 1865; The Fourteenth Amendment provides equal rights and legal protection for all US citizens irrespective of racial ancestry. It was ratified on 9 July 1868; The Fifteenth Amendment expressly grants African Americans the right to vote. It was ratified 3 February 1870.

⁴⁵ See e.g. U.S. *Civil Rights Act 1964*; *Voting Rights Act 1965* & the *Fair Housing Act, 1966* (some of many federal civil-rights statutes to challenge racial discrimination).

⁴⁶ Aylward, *supra* note 37 at 16.

⁴⁷ James W St. G Walker, *“Race,” Rights and the Law in the Supreme Court of Canada* (Toronto: The Osgoode Society for Canadian Legal History and Wilfred Laurier University Press, 1997) at 124-25.

⁴⁸ Aylward, *supra* note 37 at 16.

⁴⁹ [1960] SC c. 44.

specifically relating to federal statutes. The *Canadian Charter on Rights and Freedoms*⁵⁰ which provides basic human rights waited until 1982 to become part of the constitution. *Section 15(1)* dealing specifically with equality, waited until as recently as 1985 to come into force.⁵¹ The section states that:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, nationality or ethnic origin, colour, religion, sex, age or mental or physical disability.

It must also be noted that this major deviation by Canada from its US counterpart does not mean that there was absolutely no human rights legislation in Canada. The contrary is actually the case. In 1977, there was a legislation centred on human rights, in operation across all provinces in Canada except in Quebec.⁵² This legislation vested race discrimination matters in the Human Rights Tribunals. The procedural bottlenecks at these tribunals nevertheless made it quite restrictive for the “vast majority of race-based human rights complaints to reach the board of inquiry stage within the human rights process.”⁵³ Race-based issues could therefore not proceed further to trial, even if complainants of colour wanted otherwise.

History of Anti-Black Racism in Canada

Barrington Walker meticulously traces the history of Blacks in Canada to the 17th century, when they were brought to the country in large numbers as slaves.⁵⁴ They were “bought, sold and compelled to submit to a life time of coerced labour.”⁵⁵ Slavery was endorsed by law

⁵⁰ *Constitution Act*, 1982, s 8, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.

⁵¹ Aylward, *supra* note 37 at 16.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Barrington Walker, *Race on Trial: Black Defendants in Ontario's Criminal Courts, 1858-1958* (Toronto: University of Toronto Press, 2010) at 4.

⁵⁵ *Ibid.*

which provided for property rights at the time.⁵⁶ Backhouse explains that the Canadian society was “built upon centuries of racial division and discrimination” whose “legacy...infects all of our institutions, relationships, and legal frameworks.”⁵⁷

From 1858 to 1958, Walker says that “Blacks in Canada lived in a state of paradox, caught between formal legal equality and deeply entrenched societal and economic inequality.”⁵⁸ The liberal order supposedly allowed them “full legal equality and the rights of citizenship, but nonetheless, [also permitted] legally supported racial discriminatory behavior against them.”⁵⁹ “Blacks faced a daunting number of barriers to full inclusion in Canadian society.”⁶⁰ An example is gleaned from the law that stipulated curfew hours for Blacks.⁶¹ Within the specified hours, it was mandatory for Blacks to be “out of town or indoors.”⁶² Similarly, law which understandably regulates labour relations expressly provides for the roles of masters and servants.⁶³ Another example is obtained from the early 20th century, when Canada operated a “White only” immigration policy. Blacks in the U.S., who were greatly victimized by Jim Crowism at the time, were prevented from entering Canada because of that policy.⁶⁴ “The period between mid-nineteenth century and the post-Second World War era [in Canada] was [also] a time of social inequality, immigration restrictions, ugly discourses of scientific racism, legally supported segregation, as well as other forms of ‘Jim Crowism,’”⁶⁵ targeted against Black people.

⁵⁶ *Ibid* at 5.

⁵⁷ Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada: 1900–1950* (Toronto: University of Toronto Press, 1999) at 274.

⁵⁸ Walker, *supra* note 54 at 3.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid* at 8.

⁶⁴ St. G Walker, *supra* note 47 at 127.

⁶⁵ Walker, *supra* note 54 at 6.

At several times during those dark periods, the British colonial masters offered the Blacks freedom from slavery. As soon as the Blacks fulfilled their own end of the bargain, the British always reneged on their own part. This was to ensure the perpetuation of Black slavery.⁶⁶ It was not until the civil rights era of the 1960s and 1970s, that Black Canadians saw any semblance of equality.⁶⁷ The ‘White only’ immigration policy was amended and the policy of multiculturalism was enacted.⁶⁸

It is important to note that early narratives by scholars gave a skewed account of the history of Blacks in Canada. They depicted Canada at the time as a welcoming country that provided a safe haven for Blacks fleeing persecution from the U.S. The slavery of Blacks in Canada was greatly downplayed and not even mentioned by some of these scholars. Interestingly, this is still the only historical narrative many Canadians know about the origins of Blacks in Canada today. Subsequent scholarship on this history however dug up the more factual dark narrative. This has dispelled the earlier myths by proving that the earlier narratives which portrayed Canada as a “sanctuary” for Blacks were not entirely true.⁶⁹

It is important to note that Canada in contemporary times has either signed or acceded to all the multilateral treaties already highlighted earlier in this chapter.

A Canadian independent news outlet which sources commentaries from academics reported on August 19, 2017, that about 4,000 people assembled in Downtown City Hall in Vancouver in counter protest of a White nationalist rally, which was mainly anti-immigration and anti-Muslims.⁷⁰ Subsequently, CBC-TV News interviewed a counter-protester who was

⁶⁶ *Ibid* at 5.

⁶⁷ *Ibid* at 6.

⁶⁸ *Canadian Multiculturalism Act*, RSC 1985, c 24 (4th Supp).

⁶⁹ Aylward, *supra* note 37 at 6.

⁷⁰ “Dear White People, Wake Up: Canada is Racist” *The Conversation* (6 September, 2017), online: <<http://theconversation.com/dear-white-people-wake-up-canada-is-racist-83124>>.

quoted to have said: “I’ve never seen a racist.”⁷¹ The article goes on to say that this statement only showed the naivety and misunderstanding common about white extremist groups in Canada.

It says as follows:

It reflects the mythical Canadian narrative of inclusivity and diversity. Canadians widely believe their country to be a peaceful, multicultural country without racism...Yet human rights activists and critical race scholars provide evidence that inequity is woven into the fabric of Canadian institutions and normalized in everyday practices.⁷²

The article thereafter quotes the sociologist, David Gillborn, who explains that most racist acts remain “hidden beneath a veneer of normality and it is only the more crude and obvious forms of racism that are seen as problematic by most people.”⁷³ The article concludes by stating that:

The white male protester who said he’d never seen a racist has most likely lived with the white privilege of never having to witness or to recognize incidents of racism that people of colour frequently encounter. He likely would not have confronted the ways that systemic racism pervades all of our lives and is routinized in everyday Canadian life.⁷⁴

Franca Iacovetta adds as follows:

As a left feminist anti-racist, I am not content with simplistic notions of liberal pluralism or self-congratulatory rhetoric about how, these days, everyone gets to join the ever-expansive ‘Canadian family.’ We must also be prepared to fight racism in whatever form it takes and to challenge the grim realities of a Canada that, notwithstanding important accomplishments, remains in many respects a vertical mosaic in which privilege and opportunity still arise according to class-based, racist and sexist, including heterosexist, criteria.⁷⁵

In 2011, in the recent case of *Ontario (Attorney General) v Fraser*,⁷⁶ the Supreme Court of Canada was asked to decide the action which primarily challenged the *Agricultural*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Franca Iacovetta, *Gatekeepers: Reshaping Immigrant Lives in Cold War Canada* (Toronto: Between the Lines, 2006) at x.

⁷⁶ 2011 SCC 20; [2011] 2 SCR 3.

Employees' Protection Act,⁷⁷ which is an Ontario Statute. It was argued, on behalf of temporary agricultural workers, that the *Act* negated the constitutional rights provision guaranteeing freedom of association,⁷⁸ since it prevented them from exercising any form of collective bargaining rights. The Supreme Court by an 8:1 majority held that the *Act* is constitutional. *By this decision*, the Court seems to have limited the protection provided by the *Canadian Charter*.

Smith explains the legal and non-legal battles that agricultural workers of colour, who are mainly from the Caribbean Islands and Mexico, have had to fight under the Seasonal Agricultural Workers Program. He critiques the Supreme Court's racial indifference that permeated throughout the courts proceedings. He says that "the absence of engagement with how processes of racialization and racism shape the legal regulation of contemporary agricultural production in Canada"⁷⁹ was a puzzling dimension of the decision.

Critical Race Theory

Critical Race Theory (CRT) evolved in the 1970s from its humble beginnings in the civil rights movements of the 1960s United States of America.⁸⁰ It is an offshoot of both Critical Legal Studies (CLS) and radical feminism movements.⁸¹ About 1976, some left-leaning White legal scholars started challenging the linear nature of the five major tenets of Legal Liberalism which had, up till that point, defined the scope of legal education.⁸² These five tenets are the

⁷⁷ SO 2002, c. 16.

⁷⁸ *Canadian Charter of Rights and Freedoms*, s. 2(d), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

⁷⁹ Adrian Smith, "Racialized in Justice: The Extra-Legal Struggles of Migrant Agricultural Workers in Canada" (2013) 31 Windsor YB Access Justice at 23.

⁸⁰ Richard Delgado & Jean Stefancic, *Critical Race Theory: An Introduction* 3rd ed (New York: New York University Press, 2017) at 4 [Delgado & Stefancic, CRT].

⁸¹ *Ibid.*

⁸² Kimberle Crenshaw et al (eds), *Critical Race Theory: The Key Writings that Formed the Movement* (New York: The New Press, 1995) at 60 [CRT Key Writings]; Aylward, *supra* note 37 at 19.

“rule of law, formalism, neutrality, abstraction and individual rights.”⁸³ These critiques led to the formation of CLS as a distinct legal theory. Many scholars of colour readily embraced CLS because it challenged the objectivity of the law; which many believed, was a tool of oppression for racial minorities.

Scholars of colour noted that the “fundamental role of race in the formation of American law was marginalized in the American legal academy.”⁸⁴ These theorists understood the law’s complicity in the “construction and maintenance of social domination and subordination”⁸⁵ of racialized people. In challenging the existing paradigms of law, racialized scholars questioned legal liberalism as put forward by the founding fathers of the legal profession. In addition, they questioned the “relative silence of legal radicals- namely critical studies writers- who ‘deconstructed’ liberalism yet seldom addressed the role of deep-seated racism in American life.”⁸⁶ Both CLS and CRT similarly critique the legal discourse. CRT however disagrees with CLS which is manifestly made up of White scholars, because they remain hesitant in speaking up in relation to racial issues. CRT on the other hand, which is primarily made up of scholars of colour, considers this lack of interest in race matters by CLS a great void. According to Crenshaw et al, before both schools of thought can agree, it is important to “deal with the divergent cultural backgrounds that each [brings] to the dialogue.”⁸⁷ CRT therefore acknowledges the stance taken by CLS in critiquing the liberal order. CRT however deems this stance incomplete since CLS is not “grounded in the experiences of [racialized] people

⁸³ Aylward, *supra* note 37 at 19.

⁸⁴ Cornel West, “Foreword” In Kimberle Crenshaw et al (eds), *Critical Race Theory: The Key Writings that Formed the Movement* (New York: The New Press, 1995) at xi.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Crenshaw et al, *CRT Key Writings* *supra* note 82 at 60.

struggling against oppression.”⁸⁸ This position is supported by Mari Matsuda who adds that although CLS critique of the ideology of law is effective, it ends up becoming theoretical, abstract and empty, without the concrete lived experiences of people of colour. She argues that:

Those who have experienced discrimination speak with a special voice to which we should listen...[A]dopting the perspective of those who have seen and felt the falsity of the liberal promise, can assist critical [legal] scholars in the task of fathoming the phenomenology of law and defining the elements of justice.”⁸⁹

The concept of justice should therefore lie with the “groups who have suffered through history.”⁹⁰ It is only from this standpoint of racialized persons and groups, that “moral relativism [can] recede and identifiable normative priorities emerge.”⁹¹

Early CRT scholars were therefore “attracted to and repelled by certain elements of liberal civil rights discourses, and at the same time, attracted to and repelled by certain discursive elements within CLS.”⁹² CRT grew in response to tackling racial issues in both “liberal and radical spaces.”⁹³ The theory as exists today adopts two major tenets of CLS. The first is “legal indeterminacy.”⁹⁴ This essentially means that most legal cases do not have only one correct decision; as has been previously taught in law schools. On the contrary, the decisions arrived at in many cases, are the products of how judges are persuaded by the interpretative arguments provided by the contending parties, appearing before the courts. In addition, CLS also argues that the personal, moral, religious and political standpoints of judges also taint many decisions they

⁸⁸ *Ibid.*

⁸⁹ Mari Matsuda, “Looking to the Bottom: Critical Legal Studies and Reparations” In Kimberle Crenshaw et al (eds), *Critical Race Theory: The Key Writings that Formed the Movement* (New York: The New Press, 1995) at 63.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² Kimberle Williams Crenshaw, “Unmasking Colorblindness in the Law: Lessons from the Formation of Critical Race Theory” In Kimberle Crenshaw et al (eds), *Seeing Race Again: Countering Blindness across all Disciplines* (California: University of California Press, 2019) at 72.

⁹³ *Ibid.*

⁹⁴ Delgado & Stefancic, *CRT supra* note 80 at 5.

make. CLS therefore calls into question the supposed fact that judges merely follow the doctrine of precedents, to reach a determined outcome in every case. CLS argues that this may not be entirely correct.

In addition to legal indeterminacy, CRT also borrows the “skepticism of triumphalist history”⁹⁵ from CLS. This argues that the seeming successes recorded in the civil rights struggles by racial minority groups in the courts, tend to deteriorate over time. This is because subsequent decisions by lower courts adopt very narrow interpretations of those established precedents. There are also many forms of administrative delays which water down the effect of some of these landmark decisions. According to Bell, “legal precedents we thought permanent, have been overturned, distinguished, or simply ignored. All too many of the black people we sought to lift though the law from a subordinate status to equal opportunity are more deeply mired in poverty and despair than they were during the separate but equal era.”⁹⁶ Patricia Williams, in faulting the instrumentality of the law, says that the “law too often seeks to avoid this truth by making up its own breed of narrower, simpler but hypnotically powerful rhetorical truths. Acknowledging, challenging, playing with these *as* rhetorical gestures is, it seems to me, necessary for any conception of justice.”⁹⁷ Similarly, the Honourable Justice Omatsu quotes from Professor McCormick’s concluding report as follows: “There is no suggestion that the underdog always loses – it’s just that they tend to lose, on balance over the long run...The courts rather than acting as check on the rich and powerful, in fact have privilege-reinforcing tendencies.”⁹⁸ Professor McCormick’s report was generated after studying some 4,000 decisions of the Supreme Court of Canada; for the period ranging from 1949 to 1992.

⁹⁵ *Ibid.*

⁹⁶ Derrick Bell, “Racial Realism” in Delgado & Stefancic, eds, *Derrick Bell Reader*, *supra* note 29 at 75.

⁹⁷ Patricia J. Williams, *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 2001) at 10.

⁹⁸ The Honourable Maryka Omatsu, “The Fiction of Judicial Impartiality” (1997) 9 Can J Women & L 1 at 7.

In addition to CLS, CRT also subscribes to the radical feminists' perspective of power dynamics in society. Feminist methodology asserts that there is an invisible patriarchal force of dominance within any society; and this affects and determines the roles of people within that society.⁹⁹ CRT extends this gender comparison to include racialized groups in relation to the dominant White racial majority of the Global North.

Early crusaders of CRT were also legal scholars much like the CLS movement. Although the foundation of CRT is legal, it quickly transcended the legal boundary. It is currently interdisciplinary permeating several disciplines within the health and social sciences, humanities, even to the field of education.¹⁰⁰

Derrick Bell is credited with being one of the founding fathers of the CRT movement. He had ideological support from scholars like Michel Foucault and Jacques Derrida.¹⁰¹ Both of these scholars agree that law has a boundary that will always exclude some people who will fall outside the boundary of law.¹⁰² These persons cannot be therefore protected by law. They both write copiously about the force and violence of law.¹⁰³ For Bell, "CRT is a body of legal scholarship, a majority of whose authors are both existentially people of colour and ideologically committed to the struggle against racism, particularly as institutionalized in and by law."¹⁰⁴ Bell also notes that White Critical Race theorists are "usually committed to the overthrow of their

⁹⁹ Delgado & Stefancic, *CRT supra* note 80 at 5.

¹⁰⁰ *Ibid* at 7-8.

¹⁰¹ *Ibid* at 4-5.

¹⁰² Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language*, translated by AM Sheridan Smith (New York: Pantheon Books, 1972) at 127.

¹⁰³ Jacques Derrida, "Declaration of Independence" in Elizabeth Rottenberg (ed) *Negotiations: Interventions and Interviews, 1971-2001* (California: Stanford University Press, 2002) at 50; Michel Foucault, "The Order of Discourse" In Michael J. Shapiro (ed) *Language and Politics* (Oxford: Basil Blackwell, 1984) X at 111.

¹⁰⁴ Derrick Bell, "Who's Afraid of Critical Race Theory?" in Delgado & Stefancic (eds), *Derrick Bell Reader, supra* note 29 at 78.

own racial privilege.”¹⁰⁵ Today, CRT is essentially a social justice movement; comprising “activists and scholars interested in studying and transforming the relationship among race, racism and power...Critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, enlightenment rationalism, and neutral principles of constitutional law.”¹⁰⁶ According to proponents of CRT, racial sentiments have always existed at the core of law and policy. These racial attitudes also constitute many parts of legal institutions.¹⁰⁷ CRT is therefore “part of a long tradition of human resistance and liberation” for people of colour.¹⁰⁸ Systemic racism is therefore not only a thing of the past. It transcends the present; and is also futuristic. This seems to signal that there is no end yet in sight, when race will cease to be a major determinant in the formulation of laws and other important policies affecting people of colour.

Some basic CRT tenets as highlighted by Delgado and Stefancic are as follows:

- Racism is common. It takes place daily in the ordinary course of business of any society. Wang refers to racial discrimination by ‘White-skinned’ people as the activated default mode.¹⁰⁹ She says that racism is normalized by people and in the absence of any conscious alternative, it quickly becomes routine.¹¹⁰
- There exists a racial hierarchy in every society where White people are at the top of the pyramid; while the people of colour are subjugated at the bottom. It is this racial hierarchy that results in various forms of racial prejudices. Racial hierarchy reinforces

¹⁰⁵ *Ibid* at 79.

¹⁰⁶ Delgado & Stefancic, *CRT* *supra* note 80 at 3.

¹⁰⁷ *Ibid*.

¹⁰⁸ West, *supra* note 84 at xi.

¹⁰⁹ Lu-in Wang, *Discrimination by Default: How Racism Becomes Routine* (New York: New York University Press, 2006) at 12.

¹¹⁰ *Ibid*.

privileges for White people in many ways and by implication, results in disadvantages for people of colour. White privilege is defined as “the myriad of social advantages, benefits and courtesies that come with being a member of the dominant race.”¹¹¹ “White supremacy and white privilege involve doggedly refusing to acknowledge the contributions, and the vast knowledge, of the majority of people in the world who are not white.”¹¹²

- Racism needs to be first acknowledged before it can be cured. This is especially true for the implicitly held racist ideologies. Bell argues that the end of the civil rights era merely saw an end of “one form of discriminatory conduct that soon appeared in a more subtle though no less discriminatory form.”¹¹³ Although these contemporary racial barriers “are less visible but neither [are they] less real nor less oppressive.”¹¹⁴
- There is “interest convergence”¹¹⁵ otherwise referred to as “material determinism”¹¹⁶ in perpetuating racism. This means that White dominated societies are not motivated to stop racism. The reality is that racism ultimately advances the physical and material interest of White people; who constitute the privileged group in these societies. This tenet says that the privileged people will prefer to maintain racial discrimination to further protect their collective superior interests. Delgado and Stefancic refer to Derrick Bell’s simple explanation of interest convergence as “people believe what benefits them.”¹¹⁷ Both authors do not however foreclose the possibility of people of colour breaking into the

¹¹¹ Delgado & Stefancic, *CRT supra* note 80 at 89.

¹¹² “Charlottesville: White Educators Need to Fight Racism Everyday” *The Conversation* (15 August 2017), online: <<https://theconversation.com/charlottesville-white-educators-need-to-fight-racism-every-day-82550>>.

¹¹³ Bell, “Racial Realism” *supra* note 96 at 75.

¹¹⁴ *Ibid.*

¹¹⁵ Delgado & Stefancic, *CRT supra* note 80 at 8.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid* at 48.

ranks of the elites. They argue that once racialized people become elites, many of them ironically become complicit in helping the system to further perpetuate racism.

- Racism is socially constructed, manipulated and varied as deemed convenient. This means that anti-racial ideologies are held without recourse to any known scientific truths. They are simply held to perpetuate racial discrimination. This canon also holds that a particular racial minority group is targeted at any given time merely as deemed convenient. After a certain passage of time, the discrimination moves on to a different racial minority group. This trend seems to continue at unspecified intervals in different regions of the Global North.
- There exists differential racialization against people of colour. This tenet extends the last one above. It states that targeting a particular racial group at any given time, is often in response to certain labour market indicators existing at the time. When the work force needs people to fill multiple and usually low income job vacancies, that the White dominant group will ordinarily not do, that society is willing to reduce the discrimination towards a specific targeted racialized group temporarily until that economic need passes. After that, the hostility increases.
- Racial discrimination also specifically targets people at the margins and intersections of racialized groups. Since there are no mutually exclusive racial groups, there will always be various degrees of intersections among people.¹¹⁸ Delgado and Stefancic note Crenshaw's reference to the ability to make these racial categorizations in the first place, as symbolizing power.¹¹⁹ In questioning the categorizations of gender and race, Williams

¹¹⁸ Kimberle W. Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color" in Taylor Edward, Gillborn David & Ladson-Billings Gloria, eds, *Foundations of Critical Race Theory in Education* 2nd ed (New York: Routledge, 2016) 223 at 223-24.

¹¹⁹ *Ibid* at 224.

highlights the problems of intersectionality of persons caught in between these groups as well. She notes the identity dilemma confronting biracial persons and others who are considered too light complexioned to be Black and others who are seen as too dark to be White. She faults the instrumentality of the law in these categorizations which she claims ultimately negates principles of justice and fairness.¹²⁰

Delgado and Stefancic contend that the above primary tenets of CRT are still the norm today. At best, only some of the tactics relating to them may have changed.¹²¹

Not all CRT proponents believe in exactly the same doctrines or methods. They are, however, united in seeking two main goals namely: “to understand how a regime of white supremacy and its subordination of people of colour has been created and maintained in [the Global North], and...a desire not merely to understand the vexed bond between law and racial power but to *change* it.”¹²² CRT in this regard aims to:

Reexamine the terms by which race and racism have been negotiated in American consciousness, and to recover and revitalize the radical tradition of race – consciousness among African Americans and other peoples of colour – a tradition that was discarded when integration, assimilation and the ideal of colour-blindness became the official norm of racial enlightenment.¹²³

In addition to the basic canons of CRT stated above, another point worthy of note is the strategy that was adopted by the early CRT scholars. They decided to use “legal storytelling”¹²⁴ otherwise referred to as “counter storytelling.”¹²⁵ Delgado and Stefancic say that non-racialized persons cannot possibly understand what racism feels like. That most stories White people

¹²⁰ Williams, *Alchemy*, *supra* note 97 at 10.

¹²¹ Delgado & Stefancic, *CRT supra* note 80 at 7-11.

¹²² Crenshaw et al, *CRT Key Writings supra* note 82 at xiii.

¹²³ *Ibid* at xiv.

¹²⁴ Delgado & Stefancic, *CRT supra* note 80 at 44-48.

¹²⁵ *Ibid*.

encounter are the usual racist narratives which have been normalized over the years. These stories remain the offshoot of the colonial project. To counter these already existing narratives, it is important for people of colour to tell their own stories based on their personal lived experiences. The aim of telling these stories is to create an awareness of “alternate realities”¹²⁶ to what most people are already familiar with. These various “[s]tories, parables, chronicles, and narratives are powerful means for destroying mindset - the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse take place.”¹²⁷ These counter narratives therefore afford racialized people the opportunity of projecting the bigger picture for a better-informed analysis by all.

The ‘counter storytelling’ approach employed by Critical Race scholars has also been the major source of criticism of the theory as a whole. Many of the narratives are said to be subjective, possibly inaccurate and most importantly unverifiable by any empirical studies. Bell tells us that:

You will not be surprised to learn that the legal academy has not warmly embraced critical race theory, particularly at the faculty level. Indeed, a small but growing body of work views critical race theory as interesting, but not a “sub discipline” unto itself and therefore amenable to mainstream standards. These writers are not reluctant to tell us what critical race theory *ought* to be. They question the accuracy of the stories, fail to see their relevance and want more of an analytical dimension to the work- all this while claiming that their critiques will give this writing a much-needed “legitimacy” in the academic world.”¹²⁸

A vivid example of this critique of CRT is gleaned from a personal experience, narrated by Patricia Williams. She was shopping in New York two weeks before Christmas. She saw through a window a sweater she liked, and wanted to purchase it for her mother. She pressed the

¹²⁶ *Ibid* at 45.

¹²⁷ Richard Delgado, “Storytelling for Oppositionists and Others: A Plea for Narrative” in Richard Delgado & Jean Stefancic, eds, *Critical Race Theory: The Cutting Edge 1* 3rd ed (Philadelphia: Temple University Press, 2013) at 71.

¹²⁸ Bell, “Who’s Afraid of Critical Race Theory?” *supra* note 104 at 80.

buzzer to be allowed into the store. A White teenage shop attendant, after physically evaluating her, denied her admittance. He mouthed that the store was closed and blew his bubble gum at her. Williams could make no other sense of the attendant's action, other than racism. This incident happened about an hour past noon on a Saturday. From her vantage point outside the large shop windows, she could see other White customers in the store. Williams goes on to explain the rage amid the humiliation she felt. Those emotions lasted several days. When she returned home that day, she wrote an account of the incident in her journal.¹²⁹

After several months, Williams was invited to speak at a "symposium on Excluded Voices sponsored by a law review."¹³⁰ In the essay she wrote for the symposium, she narrated her story of being excluded from the clothing store. She later described her reaction when the first edit reached her. "From the first page to the last, my fury had been completely cut out. My rushing, run-on-rage had been reduced to simple declarative sentences. The active personal had been inverted in favor of the passive impersonal. My words were different; they spoke to me upside down."¹³¹

After the second edit, the name of the store was taken out from the essay. Williams writes:

According to the editors and the faculty adviser, it was defamatory; they feared harassment and liability... and that they were not in the habit of publishing things that were unverifiable. I could not but wonder, in this their refusal even to let me file an affidavit, what it would take to make my experience verifiable[; t]he testimony of an independent white bystander?¹³²

¹²⁹ Williams, *Alchemy*, *supra* note 97 at 44-46.

¹³⁰ *Ibid* at 47.

¹³¹ *Ibid*.

¹³² *Ibid*.

After the article got to the press, the final copy showed that all reference to her race had been expunged as well. This was because it was contrary to the “editorial policy.” She quotes one of the editors telling her that her essay is “nice and poetic, but it doesn’t advance the discussion of any principle...This is a law review after all.”¹³³ Williams story is just one of several told by CRT scholars; where the accuracy of their narratives have been questioned.

West sums up the essence of CRT by saying that “this had been a barbaric century for the legal academy, which has, wittingly or not, constructed for the justificatory framework for shameful social practices that continue to this day.”¹³⁴ Quigley corroborates this assertion by saying that, “[o]ne hundred years ago, lawyers and judges and legislators worked in a very professional manner enforcing laws that we know now were terribly unjust. What is the difference between 100 years ago and now? History has not yet judged clearly which laws are terribly unjust.”¹³⁵ CRT therefore offers the hope of emancipation rather than the domination that had previously prevailed.

Outside of the legal space, other societal systems have also played significant roles in maintaining white supremacy at the expense of racial minorities. For instance, bell hooks narrates her struggles with education growing up in the apartheid south of the U.S., in the post-racially integrated school era. She analyzes Adrienne Rich’s poem titled, “The Burning of Paper Instead of Children.”¹³⁶ This poem challenges all forms of racism and oppression. A line from the poem describes the English language as follows: “This is the oppressor’s language yet I need

¹³³ *Ibid* at 48.

¹³⁴ West, *supra* note 84 at xii.

¹³⁵ William P. Quigley, “Letter to a Law Student Interested in Social Justice” (2007) 1:1 DePaul J for Social Justice 7 at 16.

¹³⁶ bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* (New York: Routledge, 1994) at 167.

it to talk to you.”¹³⁷ hooks further describes the English language as “a language of conquest and domination.”¹³⁸ She faults many contemporary educational tools and practices. She says that they still employ several ways of further oppressing racial minorities.

Law ought to be an instrument of order in any society. It should promote justice for all persons irrespective of race. It has however played and continues to play a huge role in entrenching the racial stereotyping that still exists today. Lopez opines that law is an active participant in the invention of race at all levels; by the way and manner legal institutions and processes are practiced.¹³⁹ He says: “I suspect that law no longer contributes to racial justice but instead legitimates continued inequality.”¹⁴⁰ Why is law so devoid of justice?

Intersectionality

Intersectionality is a topic that is integral to any discussion on CRT. It showcases the complex interconnections that affect all peoples in every society. Some of these complexities range from other factors which extend the racial discourse. These include sex, gender identities, religion, age, economic endowments, sexual orientations, ability and a host of other factors. No group of people can realistically belong to only one group. The presence of some of the above named factors potentially creates allegiance or otherwise within groups irrespective of race. Although these other factors may not be as visible as race, they also bring salient perspectives to the CRT discourse that should not be taken likely. For instance, in relation to gender identity issues, hooks defines feminism as “the movement to end sexism, sexual exploitation and sexual oppression.”¹⁴¹ She infers that these ills are inherent present in racism. Ahmed recognizes the intersectionality of

¹³⁷ *Ibid.*

¹³⁸ *Ibid* at 168.

¹³⁹ Ian Haney Lopez, *White by Law: The Legal Construction of Race* revised & updated, 10th anniversary ed (New York: New York University Press, 2006) at 78.

¹⁴⁰ *Ibid* at 143.

¹⁴¹ bell hooks, *Feminist Theory: From Margin to Centre* (Cambridge, MA: South End Press, 2000) at 33.

feminism with race. She describes feminism from the standpoint of a woman of colour, as a movement which offers “sensible reactions to the injustices of the world, which we might register at first through our own experiences...In other words, we have to make sense of what does not make sense.”¹⁴² Crenshaw advocates that all persons, especially women to embrace “identity politics” in fighting social injustices.¹⁴³ She opine that the “violence many women experience is often shaped by other dimensions of their identities, such as race and class.”¹⁴⁴ She goes on to suggest that “ignoring differences *within* groups contribute to tensions *among* groups.”¹⁴⁵ I have only highlighted the intersection of race and sex without explaining how they also interplay with the other factors as already enumerated above. These factors introduce further nuanced complexities to CRT discussions on Intersectionalities.

This thesis has deliberately avoided an in-depth discussion on intersectionality. Although it is a vital topic in understanding CRT, it does not however directly address the research question which centres on anti-Black racism in the global resettlement regime.

Anti-Black Racial Profiling in Canada in Contemporary Times

Despite the ground-breaking works by critical race theorists over the years to expose anti-Black racial bias for what it is, issues of this discrimination continues to be seen even today. There have been several reports of investigative findings of anti-Black discrimination in Canada in recent times. This issue has also been brought before the courts as well. It is important to note that the Canadian jurisprudence has struggled in the past with addressing this issue. Few courts have taken cognizance of the social science evidence in this respect. However, much more is desired from the courts in stemming this racial discrimination especially when it comes before

¹⁴² Sara Ahmed, “Living a Feminist Life” (Durham: Duke University Press, 2017) at 21.

¹⁴³ Crenshaw, *supra* note 118 at 223.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

the courts. The way and manner in which courts dispense with matters relating to anti-Black racism could go a long way in curbing it on a larger scale within the society.

One method that showcases anti-Black racism as still being prevalent in Canadian society, even in contemporary times, is through various forms of racial profiling. For instance, in *Pieters v Peel Law Association*,¹⁴⁶ the respondents, who are black lawyers, went into the lawyers' lounge during the court's recess. This lounge is meant for the use of only lawyers and law students. The Applicant's librarian walked up to the respondents in a room filled with other White lawyers, to request that they show some identification. The librarian did not make this request on any other person in the room. This formed the basis of this action. In considering whether there was anti-Black racial profiling on the part of the librarian, the Vice-Chair of the Human Rights Tribunal quoted the following passage from the social science evidence in *Nassiah v Peel (Regional Municipality) Police Services Board*¹⁴⁷ as follows:

... racial profiling social science evidence is relevant because it speaks to, not just the initial decision to stop, detain, pursue an investigation, but also supports the general phenomenon that the *scrutiny applied to the subsequent investigation* is different, more heightened, more suspicious, if the suspect is Black. The stereotyping phenomenon is the same, whether it manifests itself in the discretion to stop/arrest/detain a person in part because they are Black, or whether it manifests itself in the form of greater suspicion, scrutiny, investigation in whole or part because a suspect is Black. [Emphasis in original].¹⁴⁸

Similarly, in *R v Jackson*,¹⁴⁹ Justice Nakatsuru, while presiding over the sentencing of a Black accused person, spoke directly to him saying, "But, Mr. Jackson, this case is also about how the criminal justice system treats African Canadians. I have been asked to do something

¹⁴⁶ 2013 ONCA 396, 116 OR (3d) 81.

¹⁴⁷ 2007 HRTO 14, 61 CHRR D/88.

¹⁴⁸ Re *Pieters v Peel* *supra* note 146 at para 118.

¹⁴⁹ 2018 ONSC 2527.

about changing the law. So I have had to think about this.”¹⁵⁰ The honourable justice goes on to consider a report¹⁵¹ in support of the defense. It outlines specific anti-Black features in Canada such as the “historical and negative effects of colonialism, the role of slavery in Canada, exclusion and segregation in housing, schooling, employment, and public places, and systemic and overt racism in education, policing, and the justice system.”¹⁵² All these factors led to the formation of the ‘Black Lives Matter’ movement in Canada very much like its U.S. neighbour. The judge notes that although Canada has acceded to the *International Covenant on Civil and Political Rights*, the report, after thorough evaluation, found the government’s compliance with the provision of the treaty insufficient.¹⁵³ Justice Nakatsuru notes that this report further extended the 1992 report by Mr. Stephen Lewis in his capacity as the Adviser on Race Relations to the Premier of Ontario. The learned Judge quoted from the second page of Mr. Lewis’ letter to Premier Rae as follows:

“First, what we are dealing with, at root, and fundamentally, is anti-Black racism. While it is obviously true that every visible minority community experiences the indignities and wounds of systemic discrimination throughout Southern Ontario, it is the Black community which is the focus. It is Blacks who are being shot, it is Black youth that is unemployed in excessive numbers, it is Black students who are being inappropriately streamed in schools, it is Black kids who are disproportionately dropping-out, it is housing communities with large concentrations of Black residents where the sense of vulnerability and disadvantage is most acute, it is Black employees, professional and non-professional, on whom the doors of upward equity slam shut. Just as the soothing balm of “multiculturalism” cannot mask racism, so racism cannot mask its primary target.”¹⁵⁴

It is evident from the above quotations that Blacks face significantly high levels of discrimination within the Canadian geo-political space. This seemingly agrees with the

¹⁵⁰ *Ibid* at para 6.

¹⁵¹ *Ibid* at para 27 (by the African Canadian Legal Clinic, “Civil and Political Wrongs: The Growing Gap between International Civil and Political Rights and African Canadian Life” June 2015).

¹⁵² *Ibid*.

¹⁵³ *Ibid*.

¹⁵⁴ *Ibid*; online: <<http://www.ontla.on.ca/library/repository/mon/13000/134250.pdf>>.

arguments as put forward by CRT. Few courts have also taken judicial notice of systemic anti-Black racism based on specific social context and social science evidence. Some examples will be considered in the following cases:

In *R. v S. (R.D.)*¹⁵⁵ a 15-year old Black boy was arrested by a White police officer. The boy was accused of interfering in the arrest of another boy. The boy and the police officer were the only two witnesses of the incident. Their accounts of what transpired differed extensively. After weighing the evidence, the trial judge acquitted the accused. The Crown appealed this decision contending that the trial judge made comments that raised the issue of reasonable apprehension of bias. The Nova Scotia Supreme Court (Trial Division) in allowing the appeal held that there was reasonable apprehension of bias. A new trial was ordered. The Nova Scotia Court of Appeal upheld this decision as well. On further appeal to the Supreme Court, the Court of Appeal's decision was overturned and the decision of the trial youth court was affirmed. It would seem that the nine judges based on their rationales, seemed to be in three different groups in relation to this judgement. In the first group Justices L'Heureux-Dubé and McLachlin, agreed to the same rationale leading to the majority decision, that there was no reasonable apprehension of bias so the appeal should be allowed. Justices Cory and Iacobucci agreed that "[t]he Youth Court Judge conducted an acceptable review of all the evidence before making the impugned comments."¹⁵⁶

The second group of three justices, Lamer C.J. and Sopinka and Major JJ., dissented. They opined that:

The courts should be held to the highest standards of impartiality. Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. The trial will be rendered unfair if the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the

¹⁵⁵ [1997] 3 SCR 484 at para 47, 1997 CanLII 324.

¹⁵⁶ *Ibid* at para 3.

informed and reasonable observer. Judges must be particularly sensitive to the need not only to be fair but also to appear to all reasonable observers to be fair to all Canadians of every race, religion, nationality and ethnic origin.¹⁵⁷

Interestingly, the last group of Justices La Forest and Gonthier, in aligning substantially with the rationale put forward by the dissenting justices above; however agree with the conclusion reached by L'Heureux-Dubé and McLachlin JJ. They state that:

Judges, while they can never be neutral in the sense of being purely objective, must strive for impartiality. Their differing experiences appropriately assist in their decision-making process so long as those experiences are relevant, are not based on inappropriate stereotypes, and do not prevent a fair and just determination based on the facts in evidence.¹⁵⁸

Both the second and third groups of justices seemed to be more aligned with perpetuating the same white rationality that has been instrumental in upholding racial inequalities in the past. L'Heureux-Dubé and McLachlin JJ., while addressing the importance of social context in matters relating to anti-Black racism, delivered the following rationale:

The reasonable person is not only a member of the Canadian community, but also, more specifically, is a member of the local communities in which the case at issue arose (in this case, the Nova Scotian and Halifax communities). Such a person must be taken to possess knowledge of the local population and its racial dynamics, including the existence in the community of a history of widespread and systemic discrimination against black and aboriginal people, and high profile clashes between the police and the visible minority population over policing issues: *Royal Commission on the Donald Marshall Jr. Prosecution* (1989); *R. v. Smith* (1991), 109 N.S.R. (2d) 394 (Co. Ct.). The reasonable person must thus be deemed to be cognizant of the existence of racism in Halifax, Nova Scotia. It follows that judges may take notice of actual racism known to exist in a particular society. Judges have done so with respect to racism in Nova Scotia.”¹⁵⁹

Both Justices go on to call out racism by quoting from the findings of the family court in *Nova Scotia (Minister of Community Services) v S.M.S.*¹⁶⁰

¹⁵⁷ *Ibid* at para 2.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid* at para 47.

¹⁶⁰ (1992) 110 NSR (2d) 91.

[Racism] is a pernicious reality. The issue of racism existing in Nova Scotia has been well documented in the Marshall Inquiry Report (sub. nom. *Royal Commission on the Donald Marshall, Jr., Prosecution*). A person would have to be stupid, complacent or ignorant not to acknowledge its presence, not only individually, but also systemically and institutionally.¹⁶¹

The Supreme Court Justices L'Heureux-Dubé and McLachlin in explaining who the reasonable man is stated that; he “must be taken to be aware of the history of discrimination faced by disadvantaged groups in Canadian society protected by the Charter’s equality provisions. These are matters of which judicial notice may be taken.”¹⁶²

Similarly, in the case of *R. v Parks*¹⁶³ Justice Doherty of the Court of Appeal said as follows:

Racism, and in particular anti-Black racism, is a part of our community’s psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.”¹⁶⁴

These judicial pronouncements above, reiterate the continuous presence of anti-Black racism even in today’s Canadian society. It runs deep. It is institutionalized and normalized across the entire country. These comments are not only being made by Black scholars today, non-racialized judges and scholars are now buying into the existence of this problem.

Findings from Recent Studies

In 2017, a working group of the United Nations decried the systemic anti-Black racism inherent in street checks conducted by the police in Nova Scotia. The Nova Scotia Human Rights Commission thereafter appointed Dr. Scot Wortley, a Criminology professor at the University of

¹⁶¹ *Ibid* at para 108.

¹⁶² *R v. S. (R.D.) supra* note 155 at para 46.

¹⁶³ 1993 Can LII 3383 (ON CA); 15 OR (3d) 324; 84 CCC (3d) 353.

¹⁶⁴ *Ibid* at para 54.

Toronto, to research into the claim.¹⁶⁵ An independent report, detailing his findings on racial profiling, was released by the Halifax-area police on March 27, 2019. It showed that the community's Black population although in the minority, is subjected to six times more routine street checks than its majority White population.¹⁶⁶ Wortley states in his 180- page report that "street checks have contributed to the criminalization of Black youth, eroded trust in law enforcement and undermined the perceived legitimacy of the entire criminal justice system."¹⁶⁷ In reaction, Mark Furey, the Nova Scotia Justice Minister, has pledged to take action after he has fully reviewed this report. He said, "I will guarantee the African Nova Scotian community and all Nova Scotians that this report will not sit on a shelf."¹⁶⁸ In response, a spokesperson for the 'African Nova Scotian Decade for People of African Descent Coalition' said that the report only reiterates the "impact of historical and systemic racism"¹⁶⁹ that has been suffered by the Black Nova Scotian. In addition, Lindell Smith, the first elected Black Halifax city councilor, wrote on his website that this report will hopefully "repair the broken relationship with the Black community and our police force."¹⁷⁰

It is important to note that the Wortley report also states that "in Halifax, the odds of being stopped for a street check were highest for Black men, followed by Arab males and Black females."¹⁷¹ This invisible race-based hierarchical structure set by the Halifax police, and released in this report, underscores one of the primary tenets of CRT already put forward in this chapter.

¹⁶⁵ Brett Bundale, "Report Recommends Halifax Police's Street Checks Program be Limited or Banned" *The Canadian Press* (27 March 2019), online: <<https://globalnews.ca/news/5100944/street-checks-report/>>.

¹⁶⁶ "Black People in Halifax 6 Times more likely to be Street Checked than Whites" *CBC News* (27 March 2019), online: <<https://www.cbc.ca/news/canada/nova-scotia/street-checks-halifax-police-scot-wortley-racial-profiling-1.5073300>>;.

¹⁶⁷ See Bundale *supra* note 165.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ See *CBC News*, *supra* note 166.

Despite the several released reports of anti-Black racism in recent times, similar incidents continue to come to light. All these show that this evil is still so alive in many different ways all over the Global North. In Canada, despite the increased levels of multiracialism, the country cannot claim to be an exception to this widespread practice. The recent case of Jamal Boyce, the Black student of the University of Ottawa, adds to this narrative. The Canadian News media reported on June 15, 2019, how Boyce was arrested, handcuffed, sat on a major street for two hours, and was later put into the back seat of a police car.¹⁷² His offence was skateboarding on his way to class; while forgetting to pick up his wallet which held his identity card. A PhD student of the university, Christopher Kelly-Bisson, who observed the incident, spoke to CBC News. He admitted that he, alongside a group of about 30 students, stuck around in support of Boyce. This group of onlookers challenged the campus police officials to arrest another White man who also skateboarded past them while this incident unfurled. Kelly-Bisson claims one of the officials responded by saying that the White boy was not doing any tricks. Kelly-Bisson goes on to say that: "skateboarding is common on campus, with students and non-students of every race and age performing tricks...It really marked me as like, this is a targeted thing.... If they were going to bust everyone who skateboards on campus, they would be pretty busy."¹⁷³ Kelly-Bisson also expressed surprise hearing similar accounts from other people of colour in that small crowd about the campus security officials as well. He admits that being a White man, he has never had similar problems. He states further, "I know that there is ... systemic racism in our

¹⁷² Krystalle Ramlakhan, "Black Student Carded, Cuffed at University of Ottawa, Prompting Review", *CBC News* (14 June 2019), online: <<https://www.cbc.ca/news/canada/ottawa/university-ottawa-human-rights-office-student-twitter-carding-1.5175864>>.

¹⁷³ *Ibid.*

society. But it was a shock to me to hear that so many people are having such a problem with security on campus.”¹⁷⁴

Boyce alleges racial profiling. The matter is being investigated by the University’s Human Rights office. A professor of law at the University of Ottawa, Amir Attaran, says of the incident: “A student was arrested on campus for trespassing on his own campus. How can he trespass on his own campus? For what, skateboarding while black?”¹⁷⁵ The professor further says “I’ve graduated other black students and I hear about this all the time. This is just their reality.”¹⁷⁶ In a video, Attaran states that he has sufficient evidence to prove systemic anti-Black racial discrimination at that university. He then refers to the Human Rights office of that university as a “scandalous joke.”¹⁷⁷

The Boyce case is similar to *Pieters v. Peel Law Association*,¹⁷⁸ already discussed. There are certain spaces where non-Black people simply get offended because there are Black people there. In turn, this brings out the worst in these people. Anti-Black racism therefore erupts when and where it is least expected; even from people who are expected to know better. This is sadly the reality Black people in the Global North face repeatedly.

Racial Realism

A discussion of CRT is incomplete without mentioning racial realism. Racial realism is one of Derrick Bell’s signature themes. He speaks about “the permanence of racism”¹⁷⁹ which is a function of power. He says “power ineluctably asserts and reasserts itself, treating ruthlessly

¹⁷⁴ *Ibid.*

¹⁷⁵ Megan Gillis, Blair Crawford & Joanne Laucius, “‘Humiliating’: Black uOttawa Student Handcuffed in Campus Carding Incident” *MSN News* (14 June 2019), online: <<https://www.msn.com/en-ca/news/canada/humiliating-black-uottawa-student-handcuffed-in-campus-carding-incident/ar-AACT1uN?OCID=ansmsnnews11>>.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.* (inset is the video by Professor Amir Attaran titled “Discrimination is not Legal”).

¹⁷⁸ *Supra* note 146.

¹⁷⁹ Bell, “The Racial Preference Licensing Act” *supra* note 34 at 55.

those who get in its way.”¹⁸⁰ Racial realism sees racial equality as an ideal that is not attainable.¹⁸¹ Racial realism sees the courts as a means for preserving the racial status quo and only occasionally giving some respite to the oppressed before bouncing back to the usual norm of racial discrimination.

Racial realism therefore questions the neutrality and objectivity of judges and the entire legal process. Honourable Justice Omatsu reiterates the question asked by the administrative law theorist, Kenneth Davis: “Do we want unbiased judges, or do we want judges with the right biases?”¹⁸² To this question, Davis also provides a cynical answer. He says that without much thought, every reasonable person readily opts for neutral and objective judges. He goes on to say, that the answer, only implies that the ‘reasonable person’ only wants judges with “biases that coincide with his own.”¹⁸³ Omatsu agrees with this proposition in titling her article, “The Fiction of Judicial Impartiality.”¹⁸⁴ She very clearly opines that terms such as: neutrality and objectivity are only but myths. Her position agrees substantially with the ideology of CRT.

Based on a primary principle of logical deductions, if one premise states that, all people are biased in one way or the other; and the second postulates that, law must function through human agents; it is therefore easy to conclude that, the law is biased. To this end, it may be easy to substantiate the claim that anti-Black racism is already so entrenched in the minds of the fathers and pillars of the legal profession; whether in the academia, on the bench or as practicing lawyers, for any significant change to happen.

¹⁸⁰ *Ibid.*

¹⁸¹ Bell, “Racial Realism” *supra* note 96 at 73.

¹⁸² Kenneth C. Davis, *Administrative Law Treatise* 2nd ed, Vol 3 (San Diego: K.C. Davis University of San Diego Publishing Co., 1978) at 377-78; (cited by Omatsu, *supra* note 97 at 15).

¹⁸³ *Ibid.*

¹⁸⁴ Omatsu, *supra* note 98.

Racial realism thus takes a pessimistic view of racial equality. It postulates that racism has been too far entrenched in the psyche of man for any meaningful change to ever result; whether at present or in the future. It recommends that people of colour should simply:

Acknowledge the permanence of their subordinate status”¹⁸⁵ to guard against despair. To buttress this point, Bell says that “despite centuries of [racial] struggle, none of us – no matter our prestige or position – is more than a few steps away from a racially motivated exclusion, restriction or affront.”¹⁸⁶

He concludes by saying that “racial subordination maintains and perpetuates the American social order.”¹⁸⁷

This thesis acknowledges the hard and uncomfortable facts about anti-Black racism in the Global North, especially as put forward by CRT. I do not, however, share the absolute pessimism of racial realism. If I did, the aim and purpose of this thesis would be an exercise in futility. This research, in contributing to this discourse, therefore hopes for a greater racial equality and protection for all persons, which remains the primary goal of the CRT movement. Further analysis will build on this background in Chapter Five, arguing that refugee resettlement is another area of law and policy in which anti-Black racism is evident. First, Chapter Four will lay out the legal and political framework of refugee resettlement globally and in Canada.

¹⁸⁵ Bell, “Racial Realism” *supra* note 96 at 74.

¹⁸⁶ *Ibid* at 75.

¹⁸⁷ Bell, “Who’s Afraid of Critical Race Theory” *supra* note 104 at 80.

CHAPTER 3: LITERATURE REVIEW- RESETTLEMENT OF REFUGEES

“Resettlement is an important part of Canada’s response to the global refugee population; [for] Canada has always been an Immigration country.”¹

Resettlement is one of the three most popular durable solutions aimed at ameliorating the plight of refugees worldwide. According to UNHCR:

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against *refoulement* and provides a resettled refugee and...family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country.²

Resettlement of refugees is a strong and positive indication of international solidarity between the developed nations of the world. It helps alleviate some of the burdens thrust upon refugee hosting countries. Importantly, resettlement contributes a great deal to the international protection of refugees. International protection refers to “all actions aimed at ensuring the equal access and enjoyment of the rights of women, men, girls and boys of concern to UNHCR, in accordance with the relevant bodies of law (including international humanitarian, human rights and refugee law).”³ Many refugees are clearly in dire need of international protection. Resettlement complements the other two accepted popular durable solutions: voluntary repatriation and local integration.⁴

Resettlement involves humanitarian governance. This is “the increasingly organized and internationalized attempt to save the lives, enhance the welfare, and reduce the suffering of the

¹ Michael Casasola, “The Indochinese Refugee Movement and the Subsequent Evolution of UNHCR and the Canadian Resettlement Selection Policies and Practices (2016) 32:2 Refugee at 41; online: <<https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/40270/36409>>.

² UNHCR, *UNHCR Resettlement Handbook* Revised ed (Geneva: UNHCR, July 2011), online: <<https://www.unhcr.org/46f7c0ee2.pdf>> [*Resettlement Handbook*] at 3.

³ *Ibid* at 11.

⁴ UNHCR, *The 10 Point Plan in Action* online: <<https://www.refworld.org/pdfid/583714a44.pdf>>.

world's most vulnerable populations.”⁵ Due to the sheer magnitude of resettlement operations, it can generally only operate on an international scale. Resettlement processes involve great cooperation, planning and experience-sharing among host countries, UNHCR, resettlement countries and sometimes other transit countries. In the past, many resettlement processes were concluded without the involvement of UNHCR. In contemporary times, however, UNHCR has significantly taken up a leadership role in the organization of global resettlement.

The primary mandate of UNHCR remains to coordinate with member States to provide international protection to refugees and to find permanent solutions to global refugee problems.⁶ In furtherance of this objective, UNHCR works with many different agencies involved in different aspects of the resettlement process on an international, national and even local community basis. UNHCR depends on the many efficient partnerships it has with other international organizations, civil societies, non-governmental organizations (NGOs), and community-based groups to ensure the success of resettlement processes. The Agency's role in resettlement will be further explained later in this chapter, in the section dealing with the 'Historical Beginning of Global Resettlement'.

UNHCR primarily collaborates with two important groups, namely: the Annual Tripartite Consultations on Resettlement (ATCR) and the Working Group on Resettlement (WGR). They both serve as liaisons fostering partnerships between the agency and relevant countries. ATCR started in 1995.⁷ It has been hosted annually by UNHCR since its first meeting.⁸ It provides a

⁵ Michael Barnett, "Humanitarian Governance" (2013) 16 Ann Rev Political Science at 379.

⁶ *Statute of the Office of the United Nations High Commissioner for Refugees*, GA Res 428(V), UN GAOR 5th Sess, UN Doc A/RES/428(V) (1950) 46; *Implementing Actions Proposed by the United Nations High Commissioner for Refugees*, GA Res 58/153, UN GAOR 58th Sess, Supp 49, UN Doc A/RES/58/153 (2003) 363 at 4-5; online: <<https://www.unhcr.org/3b66c39e1.pdf>> [*Statute of Office of UNHCR*].

⁷ Caritas, "The Working Group on Resettlement in Berlin and Friedland" online: <<https://resettlement.de/en/working-group-on-resettlement-2018/>>.

platform for honest and transparent conversations to take place among the three dominant parties comprising NGOs, UNHCR and representatives of States' governments.⁹ The central issue confronting ATCR is resettlement.¹⁰ This group has led to great collaboration among all parties. It provides a forum to “address a wide range of policy and procedural matters, including advocacy, capacity building and operational support”¹¹ involved in resettlement processes. Non-member States of the *Refugee Convention*¹² with some interest in resettlement, although they may not yet be committed to the process are allowed to attend the ATCR as observers.¹³ Also welcome are countries which help with emergency evacuation and transit services.¹⁴

The WGR, on the other hand, is structured within ATCR's framework.¹⁵ “While the ATCR is designated to the discussion of strategic- political issues, the WGR focuses on integration policy and the exchange of best practices.”¹⁶ Every year, WGR chooses a theme to focus on. In 2018, WGR chose to closely study the Private Sponsorship of Refugee (PSR) Programs.¹⁷ PSR will be explained further later in this chapter, when discussing other resettlement pathways effectively deployed by Canada.

Some international organizations working in partnership with UNHCR in the resettlement of refugees include the International Organization for Migration (IOM) and the International Red

⁸ *Ibid.*

⁹ UNHCR, “Annual Tripartite Consultations on Resettlement” online: <<https://www.unhcr.org/annual-tripartite-consultations-resettlement.html>>.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Convention Relating to the Status of Refugees*, 28 July 1951; Can TS 1969 No 6; 189 UNTS 137, (entered into force 22 April 1954, accession by Canada 4 June 1969); online: <<https://www.unhcr.org/3b66c2aa10>> [*Refugee Convention*].

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Caritas, “The Working Group on Resettlement in Berlin and Friedland” online: <<https://resettlement.de/en/working-group-on-resettlement-2018/>>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

Cross and Red Crescent Movement. IOM is the arm of the UN which monitors global migratory patterns. This agency ensures that migrations across States' borders are orderly, humane and secure.¹⁸ These elements are very germane in resettlement processes for obvious reasons. Similarly, the International Red Cross and Red Crescent Movement is a humanitarian body with vast global spread. Members of this movement have been tremendously helpful to vulnerable refugees in so many diverse ways.

Qualifying Criteria for Resettlement

Like most duties undertaken by States under International Law, there are no legal obligations to resettle refugees. The *Refugee Convention*¹⁹ does not place any duty whatsoever on any of its State partners to engage in the resettlement of refugees. “Contrary to the provision of asylum, refugee resettlement is not, as mentioned, codified in hard international law. UNHCR provides advice on refugee resettlement that national governments are at their own discretion to follow or not.”²⁰ This process is therefore completely voluntary and undertaken by some States based solely on humanitarian considerations.

The total number of refugees resettled every year is a very small percentage of the total number of refugees globally. The table below depicts the vital information concerning the global resettlement numbers as compared to the total number of refugees for the years 2016 to 2018.

¹⁸ UN Migration, “IOM” online: <<https://www.iom.int/about-iom>>.

¹⁹ *Supra* note 12.

²⁰ Adele Garnier, Kristin Bergtora Sandvik & Lyra Jubilut, “Introduction: Refugee Resettlement as Humanitarian Governance: Power Dynamics” in Adele Garnier, Kristin Bergtora Sandvik & Lyra Jubilut, eds, *Refugee Resettlement: Power Politics and Humanitarian Governance* (New York: Berghahn Books, 2018) at 10.

Table A: 2016-2018 Global Resettlement Statistics

	2016	2017	2018
# Global Refugees	22.5 million	25.4 million	25.9 million
UNHCR's *PGRN	1,150,000	1,190,000	1,200,000
# Resettled	189,300	102,800	92,400
% Resettled	0.84	0.4	0.36

***PGRN-** Projected Global Resettlement Needs

According to UNHCR statistics for the year 2016, 189,300 refugees were resettled from the total global refugee population of 22.5 million people.²¹ This figure represented 0.84% of the global refugee population for that year.

For the year 2017, 102,800 refugees were resettled out of the global total of 25.4 million refugees.²² This number accounts for only 0.4% of the total number of refugees worldwide, for the year in review. The 2017 figures show that the resettlement numbers dipped to approximately half the 2016 figures.

The 2018 figures, as released by UNHCR in June 2019 show that 92,400 refugees were resettled from a global population of 25.9 million refugees.²³ This represents 0.36% of the

²¹ The UNHCR, "Figures at a Glance" 19 June 2017 (an archived copy has been attached here as Appendix A).

²² UNHCR, "Figures at a Glance" 19 June 2018 statistics has been replaced online by the 2018 figures. An archived copy has been attached here as Appendix B.

²³ UNHCR, "Figures at a Glance" 19 June 2019, online: <<https://www.unhcr.org/figures-at-a-glance.html>>; "Canada Resettled More Refugees than Any Other Country in 2018" *CBC News* (20 June 2019), online: <<https://www.cbc.ca/news/politics/canada-resettled-most-refugees-un-1.5182621>>.

current global refugee population. The 2018 number shows a further dip in global resettlement numbers when compared with 2017 figures.

This steady decline is a direct result of the stance currently taken by the United States government. In previous years, the United States has always resettled the highest number of refugees. After assuming office in 2016, the U.S. President, Donald Trump, stated very clearly, that the country's resettlement numbers will be drastically reduced,²⁴ amid other cuts in its refugee programs generally. The President in consultation with Congress determines the number of refugees to be accepted into the country every fiscal year.²⁵ In 2016, 85,000 refugees were resettled. This number was determined prior to President Trump taking office.²⁶ By executive order signed on January 27, 2016, the president reduced the resettlement number to a maximum of 50,000.²⁷ This number represents the lowest the U.S. had resettled in over ten years.²⁸ The year 2017 saw a further reduction to 45,000.²⁹ For the fiscal year 2019, the U.S. has already set an upper limit of 30,000.³⁰ The significant reduction in resettlement figures, as depicted in Table A, reflect this huge impact. It is therefore evident that, although there is currently an exponential rise in the number of refugees globally, resettlement spaces are shrinking in an inverse proportion.

²⁴ Dara Lind, "Trump Slashed Refugee Levels this year: For 2019, He's Slashing Them Even Further" *Vox* (18 September 2018), online: <<https://www.vox.com/2018/9/17/17871874/refugee-news-record-history-asylum>>.

²⁵ Zuzana Cepla, "Fact Sheet: U.S. Refugee Resettlement" (25 January, 2019), online: <<https://immigrationforum.org/article/fact-sheet-u-s-refugee-resettlement/>>.

²⁶ *Ibid.*

²⁷ Jens Manuel Krogstad & Jynnah Radford, "Key Facts About Refugees to the U.S." *Pew Research Centre: Fact Tank* (20 January 2017), online: <<https://www.pewresearch.org/fact-tank/2017/01/30/key-facts-about-refugees-to-the-u-s/>>.

²⁸ *Ibid.*

²⁹ Cepla, *supra* note 25.

³⁰ *Ibid.*

It is primarily the duty of UNHCR to identify cases in need of resettlement, within any refugee community, in all the host countries of the world. This is done in accordance with the Agency's Guidelines. UNHCR's Resettlement Service expressly provides that:

Identification of refugees in need of resettlement should be based on a refugee's objective need for resettlement and not on their subjective desire for it. Nor should identification be based on the desire of any specific actors, such as the host State, resettlement States, other partners, or UNHCR staff themselves.³¹

Some of the major factors considered by UNHCR include identified vulnerabilities and other heightened risks issues. They usually stem from any one or more of the following seven factors:

1. Legal and/or physical protection needs
2. Survivors of torture and/or violence
3. Medical needs
4. Women and girls at risk
5. Family reunification
6. Children and adolescents at risk
7. Lack of foreseeable alternative durable solutions³²

The refugees shortlisted for resettlement must have exhibited one or more of the specifically identified needs stated above. These protection gaps must still be evident while the refugees are in the countries of refuge.

Dossiers on behalf of the refugees are compiled in the different countries of refuge by UNHCR officials. These numbers are collated from all over the world at the Agency's headquarters in Geneva. UNHCR thereafter presents these global statistics in its Annual Report

³¹ UNHCR, "UNHCR-NGO Toolkit for Practical Cooperation on Resettlement: 1. Operational Activities – Identification and Referral of Refugees in Need of Resettlement: Definitions and FAQs" (June 2015), online: <<https://www.unhcr.org/protection/resettlement/4cd416d79/unhcr-ngo-toolkit-practical-cooperation-resettlement-1-operational-activities.html>>.

³² UNHCR, *Resettlement Handbook*, *supra* note 2 at 37.

on the Projected Global Resettlement Needs (PGRN)³³ to its relevant partners. In keeping with its standard protocol, UNHCR further recommends these cases to resettlement countries for protection. The PGRN therefore aids the different resettlement countries to map out their respective quotas. The wishes of these countries are then stated as quotas and allocations in their individual country chapters, using the tool of resettlement.

The global PGRN for the year 2016 to 2018 have been highlighted in Table A above. According to the current PGRN to guide resettlement numbers in 2019, UNHCR estimates that 1.4 million refugees globally, are in need of resettlement.³⁴ Syrians represent the highest number with an estimated need of 42% followed by the Democratic Republic of the Congo with 11% and South Sudan in the third place with 11%.³⁵ The PGRN goes further to say that: “Africa remains the region with the highest projected resettlement needs...from 31 different countries of asylum.”³⁶ The 2019 PGRN is similar to those of the past several years. One of the most important take away from the PGRN is that it has copiously shown that the two highest refugee producing regions of the world, in need of resettlement are Africa and the Middle East.

Resettlement Policy versus Practice

Based on the actual number of cases with resettlement needs as compiled by UNHCR, and the much lower number that will actually get resettled as depicted in Table A, there appears to be an invisible competition within the vast refugee population, for the very few resettlement spaces available. It is then up to the resettlement countries to decide who, from the pool of cases submitted to them, they are willing to resettle. Many countries conduct their own resettlement assessment of refugees and rarely rely on dossiers submitted by UNHCR as expressly stated in

³³ E.g. see UNHCR, *UNHCR Projected Global Resettlement Needs 2019*, 24th ACRT (24-25 June 2018), online: <<https://www.unhcr.org/protection/resettlement/5b28a7df4/projected-global-resettlement-needs-2019.html>>.

³⁴ *Ibid* at 10.

³⁵ *Ibid*.

³⁶ *Ibid*.

most country chapters.³⁷ Some countries which do not rely on UNHCR's dossier include the United States and Germany. France accepts dossier from UNHCR. Although Canada also accepts UNHCR dossiers, it re-assesses them on a "case by case basis"³⁸ before deciding if they will be accepted.

The 'objective need' considerations used by UNHCR in shortlisting persons in need of resettlement as shown earlier, are based on the heightened risk factor index. This sets a very high standard that seems to contravene practical realities. Most refugees who are chosen by resettlement States are usually considered based on several subjective factors. Some of these factors include possessing advanced educational backgrounds, professional skills; already speak the national language of the resettlement countries and other subjective factors.³⁹ The intention is primarily to resettle refugees who will integrate better and faster in the resettlement countries with minimal assistance.⁴⁰ Since resettlement States have complete autonomy over who they decide to resettle, it is therefore understandable that they pick the people they want. It is common to see States concentrate on certain cases based on one or a few of the seven heightened risk factors, while neglecting the others. Some States do not want refugees with certain types of vulnerabilities. For instance, Canada prioritizes the overall interest of the Canadian society in most of its resettlement processes.⁴¹ This means ranking age, adaptability and already existing

³⁷ See Appendix C.

³⁸ Online: <<https://www.unhcr.org/protection/resettlement/3c5e55594/unhcr-resettlement-handbook-country-chapter-canada.html>> (Canada's country chapter).

³⁹ Annelisa Lindsay "Surge and Selection: Power in the Refugee Resettlement Regime" (2017) 54 *Forced Migration Review* at 12.

⁴⁰ *Ibid.*

⁴¹ Laura Madokoro, "A Decade of Change – Refugee Movement from the Global South and the Transformation of Canada's Immigration Framework" in Dubinsky Karen, Mills Sean & Rutherford Scott, eds, *Canada and the Third World: Overlapping Histories* (Toronto: University of Toronto Press, 2016) 217 at 229.

Canadian family ties atop some other factors.⁴² In the same way, Canada will usually not resettle refugees with pre-existing health conditions requiring substantial financial commitments or which could potentially endanger the public health safety of Canadians.

It must be noted that every resettlement process involves a power relationship in which the resettlement countries, through UNHCR, wields all the powers in deciding the resettlement fate of the refugees. The refugees on the other hand, have very little or no agency in the resettlement decisions; except to refuse to go to the country that had been chosen for them. This may be indicative that the resettlement process is another technique through which different States vet which 'racial group' of refugees would be allowed into their countries. The instrumentality of walls and borders has been very useful in this regard.

The concepts of states and sovereignty as known today and delineated by states' boundaries are products of colonialism. It may be instructive to note that in 1878, "[a]fter years of conflict [in the Balkan region], the world's Great Powers redr[e]w the map of the Balkans at the Congress of Berlin. Three new countries, Serbia, Montenegro and Romania are established."⁴³ Who are the world's great powers? Under the auspices of the United Nations, it was so easy for some privileged voices to create independent States and adjust boundaries. For some other countries of the world which lack the same privilege, conflicts arising from these boundaries which have been creations of colonialism are largely ignored.

Reece Jones says that "borders are not natural divisions between people or benign lines on a map. They are mechanisms for some groups of people to claim land, resources, and people,

⁴² Adele Garnier, "Resettled Refugees and Work in Canada and Quebec: Humanitarianism and the Challenge of Mainstream Socioeconomic Participation" " in Adele Garnier, Kristin Bergtora Sandvik & Lyra Jubilut, eds, *Refugee Resettlement: Power Politics and Humanitarian Governance* at 2.

⁴³ Ray Wilkinson, "The Long Road Home" (2001) 3:124 *Refugees* at 26.

while fundamentally excluding other people from access to those places.”⁴⁴ Jones refers to these borders between States as ‘violent’. Based on several primary and extensive research projects he carried out, Jones argues that the “violence of borders today is emblematic of a broader system that seeks to preserve privilege and opportunity for some by restricting access to resources and movement for others.”⁴⁵ Jones concludes by telling us that States’ borders are a “long term effort to control the movement of the poor, which has its roots in slavery, vagrancy and poor laws.”⁴⁶ Seen in this regard, States could potentially perpetuate racial inequality by simply exercising their choices of which racial groups they decide to resettle while keeping others excluded.

Historical Beginning of Global Resettlement

Resettlement of refugees, like many human concepts and processes, has evolved over time. After the First World War, resettlement was a major key to solving many refugee-like situations. In the 1920s just after the Russian Revolution, about 45,000 “[W]hite Russians”⁴⁷ fled to China and were resettled in other countries.⁴⁸ Similarly, in the 1930s, many people (mainly Jews) fled Nazi Germany and were resettled by the International Refugee Organization (IRO).⁴⁹ The IRO was created in 1946 by the United Nations (UN) shortly after the UN metamorphosed from the League of Nations the previous year. The primary mandate of the IRO was the protection of the millions of refugees displaced by both the First and Second World Wars. In furtherance of this directive, the IRO initially resorted to repatriation as its option of choice when the wars ended. Many refugees however resisted this option. They still expressed credible and subsisting fears about returning to their countries of nationality. Between 1947 and 1951, the

⁴⁴ Reece Jones, *Violent Borders: Refugees and the Right to Move* (London: Verso, 2017) Preface vii.

⁴⁵ *Ibid* at 5.

⁴⁶ *Ibid* at 11.

⁴⁷ UNHCR, *Resettlement Handbook*, *supra* note 2 at 47.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

IRO successfully resettled “well over a million people...while repatriating a mere 73,000.”⁵⁰ In 1950, when the IRO was replaced by UNHCR,⁵¹ resettlement had already become a key component in the international protection of refugees. This was the situation at the time the *Convention Relating to the Status of Refugees*⁵² (*Refugee Convention*) was born.

The *Refugee Convention* is a multilateral treaty which enjoys the support of 144 nations of the world. The main aim of the treaty is for global partners to join hands in the firm resolve that people, who unfortunately become refugees, are shielded from all forms of torture and persecution. This purpose has not changed in substance after almost seven decades since the treaty came into existence.

When the *Refugee Convention* was signed and ratified by States, it was essentially a Eurocentric treaty since it was applicable only to European refugees. The treaty also specified the cutoff date of January 1, 1951⁵³ for issues to be considered as falling within the inclusion criteria of the definition of who a refugee is. The implication of both the geographical and dateline limitations meant that cases for refugee status determination, and by extension, resettlement, must have been directly applicable to circumstances related to the World Wars and no other. By inference, the *Refugee Convention* applied to European refugees exclusively. It is therefore logical to argue that the factors that led to the formation of the *Refugee Convention* in the first place, were racially engineered by default.

⁵⁰ *Ibid.*

⁵¹ *Statute of Office of UNHCR, supra* note 6.

⁵² *Refugee Convention supra* note 12.

⁵³ *Ibid* at Article 1 A(2).

When it however became evident that these geographical and dateline limitations were no longer feasible with modern realities, an amendment in the form of the *1967 Protocol*⁵⁴ was signed and ratified by States. This later treaty gave the *1951 Refugee Convention* universal coverage and applicability. It must be acknowledged that UNHCR played a vital role in pushing for the introduction of the *1967 Protocol* so that the *1951 Refugee Convention* could have universal applicability. It is, however, argued by this thesis, that despite the amendment to the *Refugee Convention* in the form of the *1967 Protocol*, the racial connotation that was present at the inception of the 1951 treaty, still continued to exist. Resettlement of refugees of colour, especially of Black refugees, was almost non-existent.

It is important to note that when the *1951 Refugee Convention* was open for negotiation and signing, there were 26 countries present at the negotiation table. At the time the *1967 Protocol* was signed, the initial 26 signatories to the *1951 Refugee Convention* were faced with the option of keeping the geographical limitation of Europe or accepting the universality of the *Convention*, all signatories chose to keep the geographical limitation of Europe.⁵⁵ The Final Act of the *Refugee Convention* states that:

The Governments of the following twenty-six States were represented by delegates who all submitted satisfactory credentials or other communications of appointment authorizing them to participate in the Conference: Australia Austria, Belgium, Brazil, Canada, Colombia, Denmark, Egypt, France, Germany, Federal Republic of Greece, Holy See, Iraq, Israel, Italy, Luxembourg, Monaco, Netherlands, Norway, Sweden, Switzerland (the Swiss delegation also represented Liechtenstein), Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela [and the former] Yugoslavia.⁵⁶

⁵⁴ *Protocol Relating to the Status of Refugees*, 31 January 1967; Can TS 1969 No 29, 606 UNTS 267 (entered into force 4 June 1969, accession by Canada 4 June 1969); online: <<https://www.unhcr.org/3b66c2aa10>>.

⁵⁵ Madokoro, *supra* note 41 at 221.

⁵⁶ *Refugee Convention*, *supra* note 12 at 6.

At the time the *1967 Protocol* was signed, the initial 26 signatories to the *1951 Refugee Convention* were faced with the option of keeping the geographical limitation of Europe or accepting the universality of the *Convention*, all signatories chose to keep the geographical limitation of Europe.⁵⁷

Also important to note is that although Canada was greatly involved in the negotiation process of the *1951 Convention*, it did not sign the treaty. When the *1967 Protocol* was however open for negotiation and signatures, the Member States of the *Convention* had risen to 147. Many of the ‘newer’ States signed the *1967 Protocol*. However, none of the original members of the *1951 Convention* signed the *1967 Protocol*. 25 countries however subsequently acceded to the provision of the *Protocol* at different times thereafter.⁵⁸ Iraq is the only country that was present at both negotiation tables for the *1951 Convention* and *1967 Protocol* which is still not a Member State to either of the instruments.⁵⁹ Canada acceded to both the *1951 Convention* and *1967 Protocol* in 1969⁶⁰ as will be further explained later in this chapter, under the history of resettlement in Canada.

When most of the 26 countries eventually acceded to the *1967 Protocol*, many still did so stipulating reservations. For example, Israel,⁶¹ Turkey and the Netherlands⁶² in acceding to the *Protocol* expressly decided to maintain the ‘Europe only’ policy. United Kingdom expressly stated its desire to exclude territories such as Swaziland, Southern Rhodesia, and Jersey.⁶³ These

⁵⁷ Madokoro, *supra* note 41 at 221.

⁵⁸ See online: <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-5.en.pdf>> at 1 (contains the Accession list to the *1967 Protocol* by States with their respective dates of accession).

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid* at 3.

⁶² *Ibid* at 4.

⁶³ *Ibid* at 5.

excluded territories are predominantly Black populated although they are not representative of the many other Black nations of the world.

Global Resettlement in the Post 1951-1990s Era

After 1951, until the 1990s, resettlement on the global stage remained largely the exclusive prerogative of White refugees. The previous discussion explains why the *1967 Protocol* made very little impact in changing the racial trajectory of resettlement even after it came into force.

With the relative stability of the European continent over the years, the numbers of refugees of European descent had also declined. The last major resettlement from Europe took place in the 1990s involving the Balkan refugees. These refugees were displaced by the Balkan Wars, otherwise known as the Yugoslav Wars.⁶⁴ The wars consisted of several “separate but related ethnic conflicts, wars of independence and insurgencies fought in the former Yugoslavia from 1991 to 2001.”⁶⁵ These wars led to the disintegration of Yugoslavia,⁶⁶ resulting in the emergence of several independent countries such as: Albania, Croatia, Slovenia, Bosnia and Herzegovina, Montenegro, Kosovo, Serbia and Macedonia.⁶⁷ Several tens of thousands of Balkan refugees who fled these wars were resettled.⁶⁸

The current statistics show that Europe no longer produces refugees except a few isolated cases. There is no longer a need for resettlement for European refugees. This thesis argues that the global resettlement regime seems to however continue resettlement using some sort of racial configuration. This era saw resettlement countries begin resettling refugees of colour who were

⁶⁴ Online: <https://en.wikipedia.org/wiki/Yugoslav_Wars>.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Guy Delauney, “Migrant Crisis: Explaining the Exodus from the Balkans” *BBC News* (8 September 2015), online: <<https://www.bbc.com/news/world-europe-34173252>>.

however not Black. In the 1970s, the focus of resettlement shifted from Europe to South East Asia with the resettlement of Indochinese refugees.⁶⁹ Another example is found in 1961 when Switzerland and Denmark authorized similar policies to resettle about 1,000 refugees each from India and Himalaya. The rationale for Switzerland was hinged on the hope of “reviv[ing] farming in the higher and bleaker valleys from which the Swiss themselves have retreated.”⁷⁰

It is important to note that, in the many years that refugees were being resettled since the 1920s, UNHCR was not always involved in the process. In some cases where UNHCR submitted dossiers, States questioned the submissions presented by the Agency.⁷¹ It was only until the mid-1990s, especially with greatly changing resettlement dynamics around the world that States began to look increasingly to UNHCR to take a leadership role in compiling and submitting dossiers for resettlement cases.⁷²

At the 50th anniversary of the *1951 Refugee Convention* in 2001, State parties reaffirmed their commitments and support for the *Refugee Convention* and its *1967 Protocol*; through the *Declaration by States Parties to the 1951 Convention and or its 1967 Protocol*.⁷³ This Declaration, like many other multilateral agreements, calls out racism and racial discrimination. It reminds:

States and UNHCR to maintain the integrity of the international refugee protection regime, notably through advocacy, as well as public awareness and information activities aimed at combating racism, racial discrimination, xenophobia and related intolerance, and gaining public support for refugees.⁷⁴

⁶⁹ John Fredriksson & Christine Mougne, “Resettlement in the 1990s: A Review of Policy and Practice” *UNHCR Geneva EVAL/RES/14* (December 1994) 4-5; online: <<https://www.unhcr.org/3ae6bcfd4.pdf>>.

⁷⁰ Madokoro, *supra* note 41 at 230.

⁷¹ Fredriksson & Mougne, *supra* note 68 at 4; Casasola, *supra* note 1 at 43.

⁷² *Ibid* at 4.

⁷³ *Declaration of States Parties to the 1951 Convention and or its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, HCR/MMSP/2001/09 online: <<https://www.refworld.org/docid/3d60f5557.html>>.

⁷⁴ *Ibid* at Article 11.

This provision by extension also seems to challenge States, to do more practically in opposing racism by their resettlement numbers than merely affirming words of treaties.

In critiquing the subjective considerations that seem to have played out in the ranking of the durable solutions over the years, as to which of the three popular durable solutions was most preferred, Chimni categorizes the post-Second World War era into two different phases. First is from 1945 until 1985. At this time, resettlement was given the priority position. It was the durable solution of choice. Although voluntary repatriation was still in principle the preferred solution, resettlement was widely promoted practically.⁷⁵ Chimni divides the second phase, which is post-1985, into three sub-stages:

The first period between 1985 and 1993, voluntary repatriation was promoted as the preferred durable solution. The voluntary character of this solution was greatly emphasized.

The second period began in 1993. This period was marked with the introduction of safe return into the discourse on voluntary repatriation. Returnees needed to be returned to their home countries in safety.

The last period is the post-1996 era. Based on practical difficulties UNHCR was facing in relation to the emphasis that repatriation needed to be voluntary, the Agency began to promote compulsory return.⁷⁶

⁷⁵ BS Chimni, "From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems: Working Paper No. 2 (May 1999), online: <<https://www.unhcr.org/research/working/3ae6a0c50/resettlement-involuntary-repatriation-towards-critical-history-durable.html>> at 1-2.

⁷⁶ *Ibid.*

Chimni's analysis of the period prior to 1985 gives some credence to how resettlement demographics seem to have coincided with the era when resettlement was largely employed for the resettlement of only White refugees.

History of Canadian Resettlement in relation to Global Statistics

Resettlement of refugees to Canada began as early as the 1940s. Up till 1969, much like the global numbers, it was also an exclusive white settler colonial project. As already explained, Canada was an active participant in the drafting of the *1951 Convention*. It did not however become a signatory until 1969,⁷⁷ almost 20 years after. Between 1947 and 1962, Prime Minister Mackenzie King's led Liberal government had successfully resettled 250,000 refugees from the British Isles and Northern Europe to Canada.⁷⁸ "By 1965 nearly 1.5 million continental European newcomers had come to Canada."⁷⁹ These resettlement numbers were facilitated with very little or no involvement by UNHCR. Within this same period, the Canadian government, much like other countries in the Global North, overlooked the huge displacement of people on the Asian continent due to events such as the vicious partitioning in India, the fall of the Japanese empire, the rise of communism in China; and the violent decolonization activities in Indonesia and Malaya.⁸⁰

When China invaded Tibet in 1959, about 200,000 Tibetans fled to India and neighbouring countries.⁸¹ Their fourteenth Dalai Lama was also living in exile in India. Shortly afterwards, the Dalai Lama made a fervent global appeal for resettlement of his people. Although

⁷⁷ Madokoro, *supra* note 41 at 221.

⁷⁸ *Ibid* at 222.

⁷⁹ Franca Iacovetta, *Gatekeepers: Reshaping Immigrant Lives in Cold War Canada* (Toronto: Between the Lines, 2006) at 6.

⁸⁰ Madokoro, *supra* note 41 at 222.

⁸¹ *Ibid* at 227.

UNHCR was involved in the Tibetan situation, the Agency's efforts were mainly unsuccessful.⁸² Initially, the Dalai Lama's appeal was not given much thought by the government and people of Canada; much like the attitude from other countries of the Global North. After several years however, an engaging debate started. In 1966, the "Dalai Lama sent a direct appeal to Prime Minister Lester B. Pearson."⁸³ This back and forth correspondence continued for years; still with very little interest by Ottawa and the general Canadian populace to seeing the resettlement through.

While the correspondence between the Dalai Lama and Canada was ongoing, Canada had acceded to the *Refugee Convention* and its *1967 Protocol*. Canada subsequently domesticated and codified the *Convention* in the form of the *1976 Immigration Act*.⁸⁴ The provisions of the *1976 Immigration Act* meant that refugee claimants could now legally seek protection in Canada as stipulated in the *1951 Refugee Convention*.⁸⁵

This same period was marked with major changes in immigration legislation in Canada. There were also heightened civil rights campaigns. These campaigns greatly challenged cross-border restrictions. Also, with Canada's greater involvement in the United Nations, the country promulgated the *Bill of Rights* in 1960.⁸⁶ Canada also abolished its biased race-based immigration policies and introduced a multiculturalism regulation in 1971.⁸⁷

After several years, and with all that was happening locally with immigration, some Canadian civil groups began advocating for more proactive measures to resettle the Tibetan refugees. In 1970, the Canadian federal cabinet authorized the pilot project of resettling some

⁸² *Ibid* at 228.

⁸³ *Ibid*.

⁸⁴ *Immigration Act, 1976*, SC 1976-77, c 52.

⁸⁵ Madokoro, *supra* note 41 at 218.

⁸⁶ *Ibid* at 223.

⁸⁷ *Ibid*.

Tibetans from India to Canada.⁸⁸ At this point, many government officials had their resistant mindset softened. Some even became somewhat enthusiastic to seeing this pilot project through. Some were still quite skeptical about this radical shift.⁸⁹ These hesitant policy makers were still “worried about the impact of admitting people whose racial make-up jarred with the country’s vision of its future.”⁹⁰ They feared this action could result in Canada losing control of its white settler status.

The successful resettlement of 240 Tibetan refugees from India between 1970 and 1971 marked a critical shift in Canadian resettlement from the Global South.⁹¹ This process was concluded quite discreetly. After the success of the pilot project with the Tibetans, the subsequent resettlement of 69,000 Indochinese refugees shortly thereafter was a big statement. In total, Canada single-handedly resettled well over 200,000 of the total 2 million Indochinese refugees; that were resettled globally from 1975 to 1997.⁹² Some other countries were involved in this latest resettlement of the Indochinese refugees. The countries which took in significant larger numbers outside Canada were the US, France and Australia.⁹³

It is important to note that in the 1970s, while the Tibetan resettlement process was ongoing, Canada reached out to resettle refugees of Asian origin who were expelled from Uganda by the dictatorial regime of the country’s head of state at the time, Field Marshal Idi Amin.⁹⁴ Between 1974 and 1976, Canada similarly extended resettlement to Black refugees from the African countries of Angola and Mozambique who had Canadian relatives. This resettlement

⁸⁸ *Ibid* at 231.

⁸⁹ *Ibid* at 219.

⁹⁰ *Ibid* at 222.

⁹¹ *Ibid* at 217.

⁹² Casasola, *supra* note 1 at 42.

⁹³ W Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response* (New York: Zed Books, 1998) at 127.

⁹⁴ Madokoro, *supra* note 41 at 217.

was again done discreetly.⁹⁵ These resettlements of Black refugees, through the family sponsorship program, further diversified the resettlement numbers for that period. (Family sponsorship is an integral part of the Private Sponsorship of Refugees Program. It is one of the innovative programs developed by Canada. It will be discussed further in this chapter, when considering other resettlement pathways in Canada.)

The largescale resettlement of the Indochinese refugees to Canada and other parts of the Global North in the 1970s thereafter changed the racial dynamics of resettlement globally. It marked the end of the “pushbacks of Vietnamese boats.”⁹⁶ These boats filled with migrants from Vietnam, Cambodia and Laos, had been previously prevented from docking in Canada. Canadian resettlement was now extended to refugees of colour.

As laudable as the Indochinese resettlement numbers were, the fact that resettlement countries including Canada were again exclusively focused on the Indochinese refugees without much consideration for similarly placed Black refugees with grave resettlement needs as well, became a source of criticism too.⁹⁷

Surge Operations in Global Resettlement

Another argument in support of systemic anti-Black racism inherent in the global resettlement regime can be seen in the way some States have addressed surge operations from certain refugee populations. ‘Surge operation’ refers to a process whereby some countries resettle refugees in great numbers to help reduce large influx of refugees from particular countries at specific periods. This is done mainly by some resettlement States increasing their usual quotas in response to UNHCR’s plea in this regard. In addition, some other States which

⁹⁵ *Ibid.*

⁹⁶ Casasola, *supra* note 1 at 42.

⁹⁷ Fredriksson & Mougne, *supra* note 68 at 5-6.

do not usually help with resettlement make certain exceptions and also get involved on an *ad hoc* basis.

At the time when Europe was still producing refugees, there seemed to be always good reasons for resettling its refugees in large numbers. There have also been surge operations implemented in later years for some other refugee groups of colour. This magnanimity however, has never been extended to Black refugees. There have generally been no surge operations for Black refugee populations. Some notable examples of surge resettlement numbers include the following: In 1957, the US welcomed 35,000 Hungarians.⁹⁸ In 1975, the US also welcomed 125,000 Vietnamese refugees.⁹⁹ In 1999, it was the turn of 20,000 Albanian refugees.¹⁰⁰ Then in February 2007, the US announced that 7,000 Iraqi refugees would be brought to the US by September that year.¹⁰¹

In a similar pattern, the Canadian government in November 2015, declared a surge operation in resettling 25,000 Syrian refugees from Jordan, Turkey and Lebanon.¹⁰² The United States quickly followed suit in 2016 by admitting 10,000 Syrians from Jordan on a fast track resettlement plan.¹⁰³ In both Canada and the US, these targeted figures for Syrian refugees alone,

⁹⁸ Central Intelligence Agency, "Report on Hungarian Refugees" (2 July 1996), online:

<https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol2no1/html/v02i1a07p_0001.htm>.

⁹⁹ Alperin, Elijah & Jeanne Batalova, "Vietnamese Immigrants in the United States" Migration Policy Institute J (13 September 2018), online: <<https://www.migrationpolicy.org/article/vietnamese-immigrants-united-states-5>>.

¹⁰⁰ Diana Jean Schemo, "Carrying Little but Hope, Albanian Refugees Begin Arriving" *New York Times* (6 May 1999), online: <<https://www.nytimes.com/1999/05/06/nyregion/carrying-little-but-hope-albanian-refugees-begin-arriving.html>>.

¹⁰¹ Kelly O'Donnell & Kathleen Newland, *The Iraqi Refugee Crisis: The Need for Action* (Washington DC: Migration Policy Institute, 2008) 18; online: <[file:///C:/Users/peter/Downloads/MPI-The Iraqi Refugee Crisis The Need for Action 011808.pdf](file:///C:/Users/peter/Downloads/MPI-The%20Iraqi%20Refugee%20Crisis%20The%20Need%20for%20Action%2011808.pdf)>.

¹⁰² Government of Canada, "#Welcome Refugees: The First 25,000- Phase 1" (2 May 2017), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/welcome-syrian-refugees/first-2500-process/phase-1.html>>.

¹⁰³ Haeyoun Park, & Rudy Omri, "U.S. Reaches Goal of Admitting 10,000 Syrian Refugees: Here's Where They Went" *New York Times* (31 August 2016), online: <<https://www.nytimes.com/interactive/2016/08/30/us/syrian-refugees-in-the-united-states.html>>.

were exceeded. In many of these expedited resettlement processes involving the Syrians refugees, there were corresponding delays for the many fewer Black refugees also awaiting resettlement through the private sponsorship programs. There seemed to be an increase in global resettlement of refugees as seen from the Syrian situation. This increase may have however been only cosmetic. As the “focus on Syrian resettlement was accompanied by a tightening of asylum systems and a stronger focus on repatriation for other refugee populations in many countries of the Global North.”¹⁰⁴

Also noteworthy of the period between 1992 and June 1997, UNHCR directly helped in resettling 47,000 refugees from the Balkan regions.¹⁰⁵ While the surge operations for the Balkan refugees were ongoing, there was no such resettlement operation for Rwandan refugees fleeing the genocides of the 1990s, although both situations were happening about the same time. The Rwandan situation is similar to the two bloody Civil Wars in Liberia (the first was 1989-1996 and the second was 1999-2003),¹⁰⁶ and other long term internal and external armed conflicts in the Democratic Republic of the Congo, Sudan, Somalia, Burundi and more on the African Continent. None of these situations have ever been addressed with any form of surge operation.

Contemporary Resettlement in Canada

When the numbers of protracted refugee situations were increasing greatly globally, UNHCR devised the “Group Profile and Proposal”¹⁰⁷ for group assessment for resettlement

¹⁰⁴ Joanne van Selm, “Strategic Use of Resettlement: Enhancing Solutions for Greater Protection?” in Adele Garnier, Kristin Bergtora Sandvik & Lyra Jubilut, eds, *Refugee Resettlement: Power Politics and Humanitarian Governance* (New York: Berghahn Books, 2018) at 10.

¹⁰⁵ UNHCR, *Resettlement Handbook*, *supra* note 2 at 50.

¹⁰⁶ Online:

<https://www.google.com/search?source=hp&ei=vuzBXN7uLZDa5gKCooSACA&q=dates+of+the+Liberian+civil+war&btnK=Google+Search&oq=dates+of+the+Liberian+civil+wars&gs_l=psy-ab.3...7951.19875..20879...0.0..0.214.4136.7j27j1.....0....1..gws-wiz.....0..0i0i131i0i22i30j0i22i10i30i0i8i13i30j33i22i29i30j33i160.wmxt8un7qWM>.

¹⁰⁷ Casasola, *supra* note 1 at 44.

instead of the usual “Individual Resettlement Registration Forms.”¹⁰⁸ This helped cut some bureaucratic tapes and aided States in meeting their resettlement targets. The individual form means that only one person can be registered as one case. The group profile on the other hand, made it possible for one proposal to be used to include details of all members of a family or other types of groups with varying numbers of people. All people included in one proposal must have similar concerns necessitating meeting the required resettlement threshold. Some examples include members of a particular ethnicity, race, religion or even nationality.

This pilot group referral plan was organized by Canada in cooperation with Australia.¹⁰⁹ Following the relative success of the pilot project, other group-processing referrals were also planned with more resettlement States.¹¹⁰ In 2003, with this simplified method, resettlement of some protracted Black refugee groups also took place. This included a group of Sudanese Christians and Somalis of the Madhiban tribe from the Dadaab refugee camp in Kenya. Significant numbers from both these refugee groups then came to Canada.¹¹¹ This simplified group method similarly benefited other racialized refugee groups like the Bhutanese and Myanmaris.¹¹² This method therefore positively impacted Black refugees groups.

Canada has successfully used the UNHCR group-referral resettlement process since then. Based on internal documentations by the Canadian office of UNHCR, Casasola summarizes the Canadian multiyear resettlement numbers from 2013- 2019 as follows:

- 4,000 Iraqis out of the Middle East by 2015, towards an overall commitment of 20,000 Iraqis, along with an additional commitment of 3,000 Iraqis in 2015;

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid* at 47.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

- 1,000 Bhutanese out of Nepal in 2015, towards an overall commitment of 6,500 Bhutanese;
- 5,000 refugees out of Turkey between 2013 and 2018 (Iraqis and Iranians in the short term);
- 10,000 Syrians from the region in 2015–17;
- 900 Colombians out of Ecuador between 2014 and 2017;
- 4,000 Eritreans out of Eastern Sudan and Ethiopia between 2014 and 2019; and
- 2,500 Congolese out of Tanzania and Burundi between 2015 and 2018.¹¹³

The figures above show that African refugees from Eritrea and Democratic Republic of the Congo are represented in this Canadian resettlement allocation. As noteworthy as this inclusion of Black refugees may seem, the numbers are so shockingly minimal when they are added up. The total number estimated for Black refugees from the whole of the African continent, represented by only the Eritreans and Congolese, for the 7-year period, is a total of 6,500. This number is negligible when compared with the over 20,000 that was reserved for only the Iraqis for the 2-year period of 2013 to 2015; or, the 10,000 for the Syrians for 2015 to 2017. That total number for Black refugees is equal to what was allocated to only Bhutan for the exact same period. The differences in these figures are quite obvious. It is important to recall that the current PGRN states that over 31 African countries have dire resettlement needs¹¹⁴ as well. Many of the African refugee situations have just been simply forgotten.

Other Canadian Resettlement Pathways

Canada remains a country largely made up of immigrants. The *Immigration Act of 1976*,¹¹⁵ in addition to specifying how refugee claimants can seek protection in Canada, also provides avenues for private citizens to contribute to resettlement through the Private

¹¹³ *Ibid* at 48.

¹¹⁴ See note 32, 34 & 35.

¹¹⁵ *Supra* note 74.

Sponsorship of Refugees (PSR) Program, mentioned above.¹¹⁶ Canada therefore has two broad resettlement programs, namely: the Government Assisted Refugee (GAR) Program and the Private Sponsorship of Refugees (PSR) Program.¹¹⁷ The GAR Program is similar to what most of the other resettlement States currently use in their resettlement process. The national or federal governments of all the resettlement countries bear all the costs necessary to implement the process. Consequently, the governments also decide which part of the world the refugees should come from. This thesis has repeatedly argued that this government process seems to be tainted with anti-Black discrimination.

On the other hand, the PSR Program is what has set Canada apart from other resettlement countries. With the PSR, Canadian citizens and permanent resident holders can individually and collectively get involved in sponsoring refugees to Canada.¹¹⁸ Faith based groups and different civil associations across Canada have also been actively involved in the resettlement process as well. The family sponsorship program is a part of PSR. It provides an avenue for the reunification of separated family members. This also plays a significant role in the Canadian resettlement numbers. According to a 2016 report by Immigration, Refugees, Citizenship Canada (IRCC), between 2010 and 2014, “Canada maintained its position as one of the top three resettlement countries of the world in terms of volume...Canadians continue to demonstrate active engagement in refugee sponsorship through Sponsorship Agreement Holders (SAH) and Group of 5 (G5).”¹¹⁹ These different PSR methods, coupled with the constant innovations in

¹¹⁶ Casasola, *supra* note 1 at 41 & 44.

¹¹⁷ *Ibid* at 44.

¹¹⁸ *Ibid* at 45.

¹¹⁹ Government of Canada, “Evaluation of the Resettlement Programs (GAR, PSR, BVOR and RAP): Final Report” (7 July, 2016), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/resettlement-programs.html>>.

resettlement policies by the UNHCR office in Canada, have opened up several opportunities; not only for refugees of colour, but, for Black refugees specifically.

The Blended Visa Office Referred (BVOR) Program is a “hybrid program matching UNHCR identified cases to private sponsoring groups, and dividing responsibility for the financial support between the government and the sponsors.”¹²⁰ In the BVOR program, the private individuals do not specifically name the refugees they want to resettle to Canada. Instead, they put up specific factors they would want the refugees to have - such as nationality and family composition; and then leave the relevant government agencies usually in designated Canadian embassies abroad, to do the matching with the list of UNHCR’s submitted dossiers. The cost of this process is usually shared between the Canadian government and the private sponsors. There have been a number of problems that have arisen from this process as well. For instance, there have been several cases of resettled refugees being mismatched with the specifications set by the sponsors. This anomaly seems to extend the criticism of anti-Black bias inherent in the GAR, to the BVOR. The Canadian government’s choices in the GAR, which are similar to what operates in other resettlement States, have been seen to largely exclude Black refugees. Since the Canadian federal government also makes all the referrals in the BVOR program, the program is also tainted with anti-Black bias. There have been several mismatched cases under the BVOR program. An example can be seen in the following hypothetical case: A sponsor requested for a Black refugee family from Burundi to be resettled. The requirements put forward include: the family must not exceed a composition of four members; should be able to at least communicate in either English or French, which are two of the three official languages in Burundi. The sponsors however, end up with an Iraqi family of seven. This family speaks only Arabic. This

¹²⁰ Casasola, *supra* note 1 at 48.

sort of problems usually poses new challenges with additional costs for the sponsors that were not initially anticipated.

Another point worthy of note is that, visa processing times in Canadian embassies in Africa are so slow, lasting several months. This problem is not the same for other regions of the world. These slow processing times pose significant challenges to African refugees coming to Canada through the PSR. Many local agencies here in Canada, involved with PSR, allude to the fact that the already bad African PSR situation, worsened during the ‘surge operation’ for the Syrians. Resources needed for processing the African cases, were diverted to the Syrian program. This position seems to be corroborated by the IRCC 2016 report. It states that “between 2010 and 2014, PSRs had lower approval rates and longer processing time compared to GARs.”¹²¹ The evaluation report found among other challenges, “the lack of clarity regarding the BVOR program, lengthy processing times for PSRs, and a lack of clear roles and responsibilities concerning the internal governance of the resettlement programs.”¹²²

It is evident that race has historically played a significant role in the global resettlement of refugees. Resettlement in the Global North has seemed to favour other racial groups to the exclusion of Black refugees. This has been the norm for decades. There has been little change in overturning these already normalized racial hierarchical systems on the global scale.

On the other hand, as already highlighted, Canadian civil society groups have been very instrumental to the great change now evident in Canada’s total resettlement statistics in contemporary times. Other than some of the irregularities identified with the BVOR program, it, along with the PSR program has arguably set Canada apart from the other resettlement countries

¹²¹ Government of Canada, *supra* note 118.

¹²² *Ibid.*

of the Global North. The country's total resettlement numbers from all its resettlement programs however reflect more racially inclusive numbers. In the next chapter, the current quotas and allocations from all resettlement States will be extensively discussed.

Although the GAR and BVOR are somewhat lopsided against Black refugees, the impact of PSR is more favourable. Eventually, the total annual figures show that Black refugees are represented. This Canadian statistics differs considerably from what operates in other resettlement climates of the Global North.

Resettlement as Humanitarian Governance

In defining resettlement at the beginning of this chapter, reference was made to the process involving humanitarian governance. Due to the very few resettlement spaces available globally which do not come close to addressing all the cases in need of this solution, it becomes expedient that proper management of the entire process is necessary to maximize its utility. In examining the humanitarian governance of resettlement Garnier, Sandvik and Jubilut rely on three analytical approaches. The first is what they call a "lifespan approach."¹²³ This approach shows the resettlement process as complex and multilayered. It does not merely begin with selection for resettlement and end with landing at the airport of the resettlement country. The selection processes for resettlement can take several years before the refugees actually depart to the resettlement countries. In the same way, after the refugees get to the resettlement countries, several support mechanisms are still necessary to help the refugees get fully integrated in the resettlement community until there is no further need of assistance.

¹²³ Garnier, Sandvik & Jubilut, *supra* note 20 at 2.

The second approach involves what the three co-authors refer to as the “spatial and temporal trajectory through the theoretical prism of power.”¹²⁴ By this, the authors situate power relationships from the already known standpoint that there are inherent inequalities in the global resettlement regime. They opine that the need for resettlement in the first place, coupled with the very few resettlement spaces that are available globally, further extends this power relationship.¹²⁵ They look at the power relationships at play in the lives of the refugees at the various local, national and international levels.¹²⁶ At the local level, and based only on the soft law that spells out resettlement protocols for UNHCR officials, in the resettlement selection process, the Agency, clearly has authority and even “coercive power toward resettlement candidates,”¹²⁷ who most of the time have no other option than to obey whatever demands are made of them to be favourably considered.¹²⁸ UNHCR through this selection process exercises power with very minimal accountability.¹²⁹ There are usually no checks to evaluate abuses of powers such as misappropriation, breaches of the standard operating protocol, coercion and corruption. This lack of accountability may potentially “weaken UNHCR’s persuasive power at the global level.”¹³⁰

Garnier, Sandvik and Jubilut identify two paradoxes in UNHCR’s power as follows: first, they concede that the agency has considerable persuasive power in the global resettlement regime by making authoritative life changing decisions directly affecting refugees.¹³¹ Although

¹²⁴ *Ibid.*

¹²⁵ *Ibid* at 2-3.

¹²⁶ *Ibid* at 3.

¹²⁷ *Ibid* at 7.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid* at 16.

this power exists, it is however “constrained by scarce resources and the political environment in which it is involved.”¹³²

Secondly, they say that, “our comparative overview of national resettlement policies indicates a paradox relating to the processes of politicization and depoliticization of refugee resettlement in resettling states.”¹³³ The current political discourses surrounding refugee resettlement in Europe and in the US, especially since President Trump, took office bears this issue out. There seems to be grey areas as to where resettlement policies and politics intersect. In addition, the resettlement of refugees discourse is subsumed in the general asylum debates and the irregular migration issues of the resettlement countries.¹³⁴ The co-authors argue that:

Depoliticization may also have led to the demobilization of domestic audiences around refugee resettlement, contributed to the stagnation of available resettlement slots, and contributed to the avoidance of focus on resettlement’s failings. The presentation of refugee resettlement as the only well-accepted way to seek protection in some resettling states may also have contributed to threaten the legitimacy of asylum.¹³⁵

To effectively tackle this paradox, the authors recommend further enhanced “studies combining critical discourse analysis and policy analysis...as well as compare political discourse on refugee resettlement with political discourse on asylum.”¹³⁶ The findings from this research may give insight that could advance a more proactive political discourse on the topic.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid* at 16-17.

¹³⁵ *Ibid* at 17.

¹³⁶ *Ibid.*

Their third approach focuses on the resettlement process as the “durable humanitarian governance [which] hints at a paradox in the portrayal of the vulnerability and resilience of resettled refugees.”¹³⁷ Garnier, Sandvik and Jubilut say that:

Refugee resettlement is primarily motivated by humanitarian concerns. Resettled refugees are often portrayed as victims, and their considerable resilience seems obscured in discourses and practices of humanitarian governance. Yet, once in resettling states, the discursive and practical space for the vulnerability of resettled refugees is limited, as resettled refugees are generally expected to integrate, perhaps after a few months or a few years of transition, like the average immigrant.¹³⁸

Garnier, Sandvik and Jubilut, in addressing this vulnerability/resilience paradox, call for more focused research into factors enhancing “refugees’ resilience before resettlement, and into what impedes refugees’ resilience in resettling states”¹³⁹ They expect that the research findings may bring new perspectives to the discourse and help in preventing the usual stereotyping resettled refugees continue to suffer. In addition, the results could help decrease structural obstacles currently affecting refugees’ resilience.

The Role of UNHCR and the Global Compact on Refugees

In September 19, 2016, the New York Declaration for Refugees and Migrants was adopted by all 193 State Members of the United Nations at its New York headquarters.¹⁴⁰ The Declaration lays out the Comprehensive Refugee Response Framework which contains proactive responses to the global refugee catastrophe. The New York Declaration for Refugees and

¹³⁷ *Ibid* at 17.

¹³⁸ *Ibid*.

¹³⁹ *Ibid*.

¹⁴⁰ UNHCR, “Comprehensive Refugee Response Framework” online: < <https://www.unhcr.org/comprehensive-refugee-response-framework-crrf.html>>.

Migrants “expresses the political will of world leaders to save lives, protect rights and share responsibility on a global scale.”¹⁴¹ Article 14 of the Declaration states as follows:

We strongly condemn acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against refugees and migrants, and the stereotypes often applied to them, including on the basis of religion or belief. Diversity enriches every society and contributes to social cohesion. Demonizing refugees or migrants offends profoundly against the values of dignity and equality for every human being, to which we have committed ourselves. Gathered today at the United Nations, the birthplace and custodian of these universal values, we deplore all manifestations of xenophobia, racial discrimination and intolerance. We will take a range of steps to counter such attitudes and behaviour, in particular with regard to hate crimes, hate speech and racial violence. We welcome the global campaign proposed by the Secretary-General to counter xenophobia and we will implement it in cooperation with the United Nations and all relevant stakeholders, in accordance with international law. The campaign will emphasize, *inter alia*, direct personal contact between host communities and refugees and migrants and will highlight the positive contributions made by the latter, as well as our common humanity.¹⁴²

The Comprehensive Refugee Response Framework led to wide-ranging consultations that lasted for two years. These consultations encompassed suggestions from the Convention’s Member States, civil society groups, international organizations, experts, scholars, individuals in the private sector and very importantly, refugees themselves. The wide-ranging consultations were carried out under the leadership of UNHCR.¹⁴³ On 17 December 2018, these consultations culminated in the Global Compact on Refugees, as it was confirmed by the United Nations General Assembly.¹⁴⁴ The Compact “is of course, non-binding, but that, by itself, does not

¹⁴¹ UN Refugees and Migrants, “UN Summit for Refugees and Migrants” online: <<https://refugeesmigrants.un.org/summit>>.

¹⁴² UNHCR, “New York Declaration for Refugees and Migrants” online: <<https://www.unhcr.org/57e39d987>>.

¹⁴³ UNHCR, “The Global Compact on Refugees” online: <<https://www.unhcr.org/the-global-compact-on-refugees.html>>.

¹⁴⁴ *Ibid.*

necessarily mean it cannot have normative impact on State behaviour.”¹⁴⁵ Betts classifies the functions of the Compact as follows:

As a document, the Compact essentially does three things. First, it offers a summary of the actors (governments, business, development and humanitarian actors, and faith-based groups, for example) who can contribute to responsibility sharing. Secondly, it identifies the areas in which they can contribute and some of the mechanisms for financial or in-kind contributions, some of which are genuinely innovative. Thirdly, it envisages some new structures in order to elicit such contributions, notably a ‘Global Refugee Forum’ and ‘Support Platforms’ for specific contexts, which will include ‘Solidarity Conferences’.¹⁴⁶

One of the four major objectives of the Global Compact includes, “expand[ing] access to third-country solutions.”¹⁴⁷ This goal clearly refers to resettlement.

One vital point relating to the Global Compact is that, for the very first time, negotiations on policy matters relating to refugee protection also involved refugees being brought to the consultation table as well. In the past, refugees were simply relegated to the background. They remained voiceless. The Global compact significantly changed this tide. It recognizes that refugees, despite their vulnerabilities, also have voices that should be listened to.

Since UNHCR took up the leadership role in global resettlement in the 1990s, it has attempted to bring some standardization into its universal practice. The Agency has contributed substantially in several ways. Its “power of persuasion in redefining refugee resettlement is undeniable.”¹⁴⁸ Some of the Agency’s achievements in recent years include the emergence of the European Union Joint Resettlement Program in 2012.¹⁴⁹ The Agency also got Brazil and

¹⁴⁵ Alexander Betts, “The Global Compact on Refugees: Towards a Theory of Change” (2018) 30:4 Intl J of Refugee L at 625.

¹⁴⁶ *Ibid* at 623.

¹⁴⁷ UNHCR, Global Compact, *supra* note 142.

¹⁴⁸ van Selm, *supra* note 103 at 28.

¹⁴⁹ Garnier, Sandvik & Jubilut, *supra* note 20 at 9.

Chile joining other resettlement countries.¹⁵⁰ In addition, UNHCR partnered with several private sector organizations to promote PSR programs.¹⁵¹ Despite these achievements however, “there are obvious limits to UNHCR’s power of persuasion.”¹⁵² Garnier, Sandvik and Jubilut note that UNHCR’s achievements did not translate into increase in the anticipated number of resettlement spaces, although there was a massive global response in favour of the Syrian refugees. Based on UNHCR’s figures as already shown in Table A,¹⁵³ the 2016 resettlement figures recorded a very sharp decline in 2017.

Also, the Agency has “been unable to achieve the inclusion of a global resettlement target of 10 percent of the world’s refugees in the New York Declaration on Refugees and Migrants adopted in September 2016 by the UN General Assembly”¹⁵⁴ The major setback for the Agency was the United States pulling out from the negotiations on the Global Compact which was intended to implement the New York Declaration.¹⁵⁵ Considering the prior record of the U.S. in relation to resettlement, the country’s current stance has adversely imparted the global program in great proportions.

It is important to note that the Global Compact has also attracted some criticisms as well. Chimni critiques the Global Compact for the following reasons:

It avoids mention of the principal cause of recent refugee flows; dilutes established principles of international refugee law; may weaken the protection of

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid* at 10.

¹⁵³ At page 50.

¹⁵⁴ Adèle Garnier, “The Future of Refugee Resettlement: Will the September Summits Make any Difference?” (2016) Norwegian Centre for Humanitarian Studies, online: <<https://www.humanitarianstudies.no/2016/09/28/the-future-of-refugee-resettlement-will-the-september-summits-make-any-difference/>>.

¹⁵⁵ Patrick Wintour, “Donald Trump Pulls US out of UN Global Compact on Migration.” *The Guardian*, (3 December. 2017), online: <<https://www.theguardian.com/world/2017/dec/03/donald-trump-pulls-us-out-of-un-global-compact-on-migration>>.

children and women; is short on real mechanisms for responsibility sharing; is myopic in stressing ‘specific deliverables’...in speaking of future academic work; and leaves to the United Nations High Commissioner for Refugees (UNHCR) the task of supervision which it is not equipped to perform (as the Compact itself, which it helped draft, demonstrates).¹⁵⁶

In acknowledging that the Refugee Compact addresses the root causes of displacement, Chimni however calls into question the silence of the Compact in placing at least some responsibility on the States of the Global North, for also triggering “recent outflows of refugees linked to their acts of intervention.”¹⁵⁷ He questions the culpability of the West in many of the armed conflicts in several countries that have led to the major reason for displacement in contemporary times.¹⁵⁸ By this view, he does not however absolve the host countries for primary responsibility for the displacements of their citizens in the first place.

Chimni further argues that the objectives as stated in the Compact may weaken the fundamental principles of international protection for refugees as provided under international law.¹⁵⁹ He regards the primary objective which deals with easing the pressures on the refugee hosting States,¹⁶⁰ as misplaced. He opines that this objective may have at best been a subsidiary objective and not a primary one.¹⁶¹ He is of the view that western countries, which are operating various non-admittance policies for refugees, at the moment are to a great extent also culpable in the high numbers of refugee deaths that have occurred.¹⁶²

¹⁵⁶ BS Chimni, “Global Compact on Refugees: One Step Forward, Two Steps Back” (2018) 30:4 Intl J of Refugee L at 630.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid* at 631.

¹⁶⁰ Global Compact on Refugees, *supra* note 142 at para 7.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

Chimni interprets the Compact's support for "return in safety and dignity"¹⁶³ as "legitimiz[ing] the actions of countries seeking to deprive refugees of a dignified life, or offering aid to States of origin to take back refugees even where there is little change in their approach towards the persecuted group."¹⁶⁴

Some other reservations pointed out by Chimni include the Compact potentially stripping women and children protection of their human rights,¹⁶⁵ stating no effective measures to properly address the scope of responsibility sharing¹⁶⁶ and lastly, stipulating no viable process in which UNHCR can realistically actualize the stated objectives.¹⁶⁷

There has been so much to unpack in respect of the historical and current global resettlement regime. There have indeed been major and positive advancement in racial equality from the period resettlement first began on the global stage, in the 1920s. There is still however, so much that can be done. "The offering of resettlement places is strikingly uneven."¹⁶⁸ Some recommendations from some scholars like Garnier, Sandvik and Jubilut have been introduced in this chapter. Some other recommendations will be further highlighted in the concluding chapter.

¹⁶³ *Ibid.*

¹⁶⁴ Chimni, *supra* note 155 at 631.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid* at 632.

¹⁶⁷ *Ibid.*

¹⁶⁸ Garnier, Sandvik & Jubilut, *supra* note 20 at 10.

CHAPTER 4: STATISTICAL FINDINGS

“[The] distinction between qualitative and quantitative social science research is more a difference of approach, not type of data or even method (some analyses could be published as either... depending on the reviewer, journal and/or discipline.”¹

In employing the doctrinal legal research method for this thesis, I became aware of web links for global resettlement data as compiled by UNHCR. With the major criticism of CRT being subjective, inaccurate and possibly unsound empirically,² it was imperative to study these links to see if they could provide some insight relevant to answering the research question.

This chapter therefore explains how the data was collated and analyzed. It states the findings which arguably support the fact that Black refugees are marginalized in the global resettlement regime as currently practiced.

In 2008, there were only 16 resettlement countries.³ In 2011, Antonio Guterres, then the UN High Commissioner for Refugees, placed the total number of resettlement countries at 25.⁴ The updated and most current report of country chapters shows that there are 23 resettlement countries.⁵ These 23 countries are committed to resettlement on a regular basis. They have established programs, budgetary allocations and quotas for resettlement every year.⁶ This list of 23 countries does not include countries which get involved in resettlement on an *ad hoc* basis; like addressing a particular resettlement need.⁷

¹ Academic Data Centre, “Quantitative vs Qualitative: Round 2” Leddy Library- University of Windsor at notes.

² Derrick Bell, “Who’s Afraid of Critical Race Theory?” in Richard Delgado & Jean Stefancic (eds), *The Derrick Bell Reader* (New York: New York University Press, 2005) 78 at 80.

³ Adele Garnier, Kristin Bergtora Sandvik & Liliana Lyra Jubilut, “Introduction: Refugee Resettlement as Humanitarian Governance: Power Dynamics” in Adele Garnier, Kristin Bergtora Sandvik & Liliana Lyra Jubilut (eds), *Refugee Resettlement: Power, Politics and Humanitarian Governance* (New York: Berghahn Books, 2018) at 1.

⁴ UNHCR, *UNHCR Resettlement Handbook* Revised ed (Geneva: UNHCR, July 2011), online:

<<https://www.unhcr.org/46f7c0ee2.pdf>> at 1 [*Resettlement Handbook*].

⁵ UN HCR, *UNHCR Resettlement Handbook and Country Chapters* Revised ed (Geneva: UNHCR, April 2018), online:

<<https://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html>> at 5 [*Resettlement Handbook and Country Chapters*].

⁶ UNHCR, *Resettlement Handbook* *supra* note 4 at 1.

⁷ *Ibid* at 5.

These 23 resettlement countries specify details relating to their resettlement wishes in their individual country chapters. The country chapters all have different web links⁸ which can be found in the UNHCR's database.⁹ Every resettlement country fills out a standardized form specifying its resettlement wishes for the year. Among the details provided in the country chapters, the countries specify their resettlement quota, and how they wish their stated quotas to be allocated among the different regions of the world. According to Garnier, Sandvik & Jubilut:

The setting of an annual resettlement figure is in some cases done by the executive branch of government, in other by the legislative branch. In either case, the decision follows consultations with "resettlement stakeholders" generally including UNHCR as well as public bodies and civil society organizations involved in resettlement from case selection to long-term integration.¹⁰

The information provided in the country chapters helps UNHCR with its annual planning, budgeting and other operational needs.

According to UNHCR's standard format, the regions of the world are classified into 5 groups namely:

1. Africa
2. Asia
3. Middle East and North Africa (MENA)
4. Europe
5. The Americas¹¹

A cursory look at the list of 5 regions above appears to suggest a categorization based on continental spread. The third group however negates this perspective. North Africa is isolated

⁸ See Appendix C.

⁹ UNHCR, *Resettlement Handbook and Country Chapters* *supra* note 5.

¹⁰ Garnier, Sandvik & Jubilut, *supra* note 3 at 11.

¹¹ UNHCR, *Resettlement Handbook and Country Chapters* *supra* note 5 (all the country chapters use this regional grouping except Canada and the US).

from the rest of the African continent and merged with the Middle East. It is important to note that Egypt is the only North African country that is unarguably a member of the Middle East.¹² There is however no consensus about which countries actually makes up North Africa. According to the United Nations (UN) map, there are 7 North African countries namely: “Algeria, Egypt, Libya, Morocco, Sudan, Tunisia and Western Sahara.”¹³ The New World Encyclopedia recognizes this UN grouping; but critiques it for its controversial inclusion of the Western Sahara which although is currently administered by Morocco, is claimed by the Indigenous and Nomadic Polisario Front.¹⁴ World Atlas names North Africa to include the 5 countries of Algeria, Egypt, Libya, Morocco, Tunisia and other territories of the Canary Islands, Pelagie Islands, Moroccan territories of Ceuta and Melilla, Western Sahara and the partially recognized state of Sahrawi Arab Democratic Republic.¹⁵

The merging of North Africa with the Middle East seems to have some racial undertone; since many North Africans are almost indistinguishable from the Middle Easterners. On the other hand, most people from the other parts of the African continent are significantly darker skinned.

Of the 23 resettlement countries, only 2 countries (Canada and the United States) deviate from this UNHCR regional classification. Both countries chose different regional groupings for the world. The details are provided later in this chapter.

As earlier stated in the third chapter, resettlement of refugees is completely voluntary for States. There are no obligations, legal or otherwise, to undertake this duty. In the same way, it is

¹² Bridgat, “List of all Countries in Middle East” (5 June 2009), online: https://countries.bridgat.com/Middle_East.html.

¹³ University of Pittsburgh, “African Studies and African Country Resources” *University Library System: Course and Subject Guides* (17 July 2019), online: <https://pitt.libguides.com/c.php?g=12378&p=65815>.

¹⁴ New World Encyclopedia, “Northern Africa” (12 December 2018), online: http://www.newworldencyclopedia.org/entry/Northern_Africa.

¹⁵ World Atlas, “Africa” (4 June 2019), online: <https://www.worldatlas.com/articles/countries-of-north-africa.html>.

also assumed that countries are not in any way bound to also maintain the standard country chapter format in the way it has been originally couched by UNHCR.

Presentation and Explanation of Data

Table B below presents a spreadsheet divided into 8 columns. The columns display the names of the resettlement countries, total projected numbers of refugees to be resettled, and the above listed five regions of the world. The relevant data for all 23 resettlement countries are indicated in 2 different colours. The 7 countries, namely: Argentina, Australia, Brazil, Chile, Netherlands, Portugal and the United Kingdom, which do not state how their intended quotas should be allocated to the regions, are highlighted in black. The information for the remaining 16 countries¹⁶ is presented in red. These countries specify how their quotas should be appropriated to the different regions.

Table B: Twenty-Three (23) Countries' Chapters

Serial No.	Country	Total	Africa	Asia	MENA	Europe	Americas
1	Argentina	50	Unspecified	regional	allocations		
2	Australia	15,000	Unspecified	regional	allocations		
3	Belgium	1150	100	-	1050	-	-
4	Brazil	58	Unspecified	regional	allocations		
5	Bulgaria	110	-	-	110	-	-
6	Canada	25,000	8490	235	17340	-	380
7	Chile	Annual	But	Unspecified	regional	allocations	
8	Czech Rep.	Specific	Demands	Analyzed	Below		

¹⁶ Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Iceland, Ireland, New Zealand, Norway, Romania, Sweden, United States of America and Uruguay.

9	Denmark	1000	115 DRC- Uganda	-	250 Syrians- Lebanon	-	-
10	Finland	750	120	-	530	-	-
11	France	500	-	-	500	-	-
12	Germany	5,600	1,100	-	7500	-	-
13	Iceland	90	-	-	90	-	-
14	Ireland	357	-	-	357	-	-
15	Netherlands	1750	Unspecified	regional	allocations		
16	New Zealand	1000	28	519	250+44	-	179
17	Norway	2,120	1,000	-	1,000	-	-
18	Portugal	30	Unspecified	regional	allocations		
19	Romania	80	-	-	60	-	-
20	Sweden	5,000	1800	300	2000	-	-
21	UK	23,000	By 2020		Unspecified	regional	allocations
22	USA	2014- 2015 70,000	Unspecified	regional	allocations		
		2015- 2016 85,000	Unspecified	regional	allocations		
		2016- 2017 70,000	17,000	49,000			4,000
		2017- 2018 85,000	25,000	57,000		-	3,000
23	Uruguay	30	-	-	30	-	-

Table C below presents the data for only the 16 countries which specify regional allocations of their quotas. 3 countries, namely: Canada, Germany and Sweden, exceed their respective quotas. Denmark on the other hand, did not fully allocate its quota. The actual resettlement figures for all 4 countries are captured in parenthesis. 2 countries, namely: Czech Republic and Denmark marked in blue, deviate from the trends presented by the other countries. Further explanation will also be provided later in this chapter.

Table C: Sixteen (16) Countries' Chapters

Serial No.	Country	Total	Africa	Asia	MENA	Europe	Americas
1	Belgium	1150	100	-	1050	-	-
2	Bulgaria	110	-	-	110	-	-
3	Canada	25,000 (26,445)	8490	235	17340	-	380
4	Czech Rep.	Specific	Demands	Analyzed	Below		
5	Denmark	1000 (365)	115 DRC- Uganda	-	250 Syrians- Lebanon	-	-
6	Finland	750	120	-	530	-	-
7	France	500	-	-	500	-	-
8	Germany	5,600 (8600)	1,100	-	7500	-	-
9	Iceland	90	-	-	90	-	-
10	Ireland	357	-	-	357	-	-
11	New Zealand	1000	28	519	250+44	-	179
12	Norway	2,120	1,000	-	1,000	-	-
13	Romania	80	-	-	60	-	-
14	Sweden	5,000 (5100)	1800	300	2000	-	-
15	USA	2014-2015 70,000	Unspecified	regional	allocations		
		2015-2016 85,000	Unspecified	regional	allocations		
		2016-2017 70,000	17,000	49,000			4,000
		2017-2018 85,000	25,000	57,000		-	3,000
16	Uruguay	30	-	-	30	-	-

Since actual allocations in numbers can be unwieldy in analysis, Table D below presents the same country quotas in percentage values for easier clarity.

Table D: Sixteen (16) Countries' Chapters in % Values

S/No	Country	Actual Quotas	% Africa	% MENA	% Asia	%Americas	%Stateless
1	Belgium	1150	8.7	91.3			
2	Bulgaria	110		100			
3	Canada	25000 (26,445)	32.1	65.6	0.9	1.4	
4	Czech Republic						
5	Denmark						
6	Finland	750	16	70.7			13.3
7	France	500		100			
8	Germany	5600 (8600)	12.8	87.2			
9	Iceland	90		100			
10	Ireland	357		100			
11	New Zealand	1000	2.8	29.4	51.9	17.9	
12	Norway	2120	47.2	47.2			5.7
13	Romania	80		75			25
14	Sweden	(5000) 5100	36	40	6		18
15	USA	85000	29.4	67.1		3.5	
16	Uruguay	30		100			

Table E: Summary of the Statistical Findings for all 16 Resettlement Countries.

Total Number of Countries	23
Unspecified Regional Allocation	7
Specified Regional Allocation	16
100% Allocation to MENA	6 out of 16
100% Allocation to Africa	Nil
Equal Allocation to Africa and MENA	1 (Norway)
Almost Equal to Africa & MENA	1 (Sweden)
Minimal allocation to Africa : MENA	7

From the summary produced in the table above,

1. 6 out of the 16 countries reserve 100% of their resettlement quotas exclusively to MENA.¹⁷ No other country similarly allocates 100% of its quota to Africa.
2. Only 1 country (Norway) apportions equal percentages to both Africa and MENA.¹⁸
3. Sweden allots an almost equal percentage to both Africa and MENA regions. It however has a 4% reduction in percentage value to Africa when compared with MENA.¹⁹
4. 7 countries have minimal allocation to Africa compared with MENA.²⁰
5. New Zealand has not been included in 1-3 above. Further analysis is given below.

¹⁷ Bulgaria, France, Iceland, Ireland, Romania (75% MENA & 25% Stateless) & Uruguay.

¹⁸ Norway allocates 47.2% each to Africa and MENA and the balance 5.7% to Stateless people.

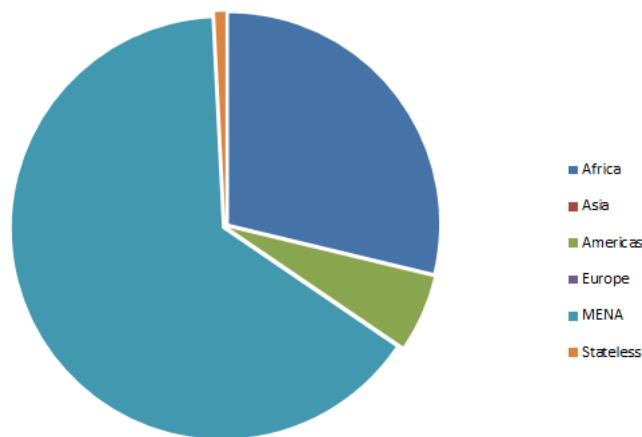
¹⁹ Sweden allocates 36% to Africa; 40% MENA; 6% Asia & 18% others.

²⁰ Belgium (8.7% Africa; 91.3% MENA); Canada (32.1% Africa; 65.6% **Middle East**; 0.9% Asia & 1.4% Americas); Denmark (31.5% Africa; 68.5% MENA); Finland (16% Africa: 70.7% MENA & 13.3% others); Germany (12.8% Africa: 87.2% MENA); USA (29.4% Africa; 67.1% **MENA and Asia** & 3.5% Americas) & Czech Republic.

Further Statistical Findings

Based on the figures provided in Table C, the total allocated resettlement spaces amounts to 131,332. Of this number, Africa was allocated 37,753 spaces which represent 28.75% of the total number. Asia was allocated 1054, indicating 0.008%. The Americas got 7,559 (5.76%); while Europe had 0%. MENA obtained 84,966 spaces which is 64.7% of the total allocated quotas. The balance 0.8% represents both stateless refugees and others from Asia. These figures are depicted in the pie chart below.

Figure 1: Pie Chart Representing Statistical Findings



It is important to recall that the 2 major refugee producing regions of the world are Africa and the Middle East.²¹ Both regions have been similarly placed for the last several years by UNHCR's Projected Global Resettlement Needs (PGRN). Both regions also have the greatest resettlement needs globally. The disparity in global allocations to both regions seems to support this thesis that the current global resettlement regime is skewed to the detriment of Black refugees.

There are several country chapters that require further analysis. They are as follows:

²¹ See UNHCR, *UNHCR Projected Global Resettlement Needs 2019*, 24th ACRT (24-25 June 2018), online: <<https://www.unhcr.org/protection/resettlement/5b28a7df4/projected-global-resettlement-needs-2019.html>>.

Canada- Deviates from UNHCR regional structure and instead adopts the following as its regions:

1. Africa
2. Asia and Oceania
3. Middle East
4. Americas
5. Others²²

It may be praiseworthy that Canada uses continents as the basis for its groups. This could take away the racial inference this thesis has already raised about the UNHCR's groupings as it currently stands.

United States of America- This is the second and only country except Canada, which varies UNHCR's regional groupings. It categorizes the world regions into:

1. Africa
2. East Asia
3. Europe and Central Asia
4. The Americas
5. Near East and South Asia

This unique categorization again raises questions similar to those raised earlier with the UNHCR groups. It questions the rationale for splitting the Asian continent into 3 of its 5 groups. Its regional allocation based on its unique grouping, may impact the statistical findings depicted above.

²² Canada's country chapter, online: <<https://www.unhcr.org/3c5e55594.html>>.

In analyzing the U.S. numbers, this thesis employed the elimination method for the country's quota for year 2017/2018. It obtained the relevant numbers by working from the known to the unknown. The stated numbers allocated to Africa and the Americas are first isolated. The remaining figure therefore represents the joint allocation for both MENA and Asia.²³

The figures for the 2 under-listed countries also require further explanations.

Czech Republic- This country has always had a targeted focus in resettling refugees. In the early 2000s, the country's target for resettlement was specifically Burmese (now Myanmar) refugees in Malaysia and Thailand.²⁴ In 2015, they also resettled "Syrian families in Jordan with severely ill children."²⁵ When the country joined the European Resettlement Scheme in July 2015, the country pledged to resettle 400 refugees within the next two years. These spaces were directed to only the Syrians and Iraqis.²⁶ This country has currently suspended its resettlement program. Although this country has welcomed other racialized refugees in the past, it had never extended any resettlement quota to Black refugees.

New Zealand- The statistics from New Zealand currently stand as 2.8% to Africa and 29.4% to MENA. The country however allocates a very high percentage of 51.9% to Asia and 17.9% to the Americas. A possible reason for this dynamic may be based on the country's geographical proximity to Asia. Migrant populations arriving in New Zealand by boats are largely from the Asian continent. Channeling most of its resettlement spaces to Asia may be influenced by an attempt to balance out the refugees and other migrant numbers already within its borders.

²³ See note 20.

²⁴ Country Chapter, online: <<https://www.unhcr.org/4e2d65a79.html>>.

²⁵ *Ibid.*

²⁶ *Ibid.*

Fixed and Variable Factors Highlighted in the Country Chapters

It is important to note some of the fixed and variable factors displayed in the country chapters and explain how they potentially influence the statistical findings as well.

The only identified fixed factor is that almost all refugees awaiting resettlement have dire protection needs irrespective of race. Ideally, they should have all been assessed against the same Heightened Risk Factor Index (already explained in the Chapter Three) by UNHCR officials, before they were selected.

It is also important to note some variable factors identified in the country chapters which may affect the statistical findings. They are as follows:

1. The amounts of detail States decide to make public in their documents vary considerably. Some chapters have more elaborate information while others are scanty. This explains the disparity in the lengths of the documents from one country to another.
2. Some countries update their chapters more regularly than others. The dates the different country chapters were last revised are displayed by UNHCR. Some of these chapters have not been updated for several years.²⁷
3. The annual periods vary among the different countries. Some countries adopt the fiscal or accounting year; some, the calendar year; while others, may be based on either the anniversary of government change in the country, or some other country specific indicator. Meanwhile, UNHCR releases its annual data in June of each year.²⁸ The result is that resettlement takes place for different countries, at different times throughout the year. This could mean some variance or overlaps in the computing years for the individual countries and UNHCR.

²⁷ See Appendix D.

²⁸ UNHCR, "Figures at a Glance" *supra* note 182; World Vision, "Forced to Flee: Top Countries Refugees are Coming From", online: <<https://www.worldvision.org/refugees-news-stories/forced-to-flee-top-countries-refugees-coming-from>>.

Limitation to Generalization

The statistical findings as explained above have been based entirely on the 2018 quotas expressly stated by resettlement countries and their wishes of how the numbers should be appropriated to the various regions of the world. These data are provided by UNHCR, and they are publicly available.²⁹ This thesis has not therefore considered other country specific factors that may be behind the stated quotas. There may be some overlaps, blind spots and other unforeseen factors that may widen the margin of error in these statistical findings. Before any generalizations based on these results can be made, it may be vital to engage in further in-depth country-specific research.

Other Plausible Reasons for the Current Statistical Findings

Based on the statistical findings above, it may be easy to conclude that Black refugees are marginalized in the global resettlement process as it is currently administered. In the course of this research however, some other plausible reasons unrelated to race were also obtained while engaging with various stakeholders at different times and fora. Some of these are as follows:

The role the media plays in shaping the individual and collective racial biases easily came to the fore. People consciously or otherwise hold different media outlets to different standards of objectivity and credibility in relation to making resettlement judgements as in many other topical issues. The influence of the media's selective reportage of specific refugee situations to the exclusion of others was brought up on several occasions. Policies are made by people who are constantly bombarded with the media in all its guises. Many print and social media narratives have directly or otherwise, shaped policies around the world. These also include important life dependent policies that affect refugees globally. The media's overhype of certain refugee populations in specific regions and seemingly ignoring other similarly placed refugees in other

²⁹ See Appendix C.

climes helps perpetuate this inherent racial bias. These media narratives may have led, and continue to lead to blind spots for many people of goodwill, who may genuinely intend to contribute their quota in alleviating the plights of vulnerable refugees. These blind spots also spiral into bandwagon effects. When a member of a civil society group resettles a refugee, other people within that same group, reach out to the very same racial group without much thought of other similarly placed refugee groups. In accepting the great influence the media has on people generally, this thesis also argues that this seeming lopsidedness, is also indicative of the inherent racial bias the generality of the media holds against Black people specifically.

As an offshoot from the above point, public discussions and opinions are formed by some of these media narratives as well. All resettlement countries are established democracies. They all have policy makers who are representatives of different constituencies. The opinions of the people in these various constituencies, on the resettlement of refugees play a huge role in what elected officials decide. It is easy to see how public opinions sway easily from one end of a continuum to another in a short space of time. When emotions arise, people sway in one direction. When these emotions dissipate, opinions sway in the exact opposite direction. A recent example can be seen in the huge support that the Prime Minister Justin Trudeau led government enjoyed from the majority of Canadians, in its effort to resettle large numbers of Syrian refugees in 2015. A few years down the line, the same government has suffered significant backlash not only in relation to resettlement but for its overall immigration and refugee policies.

Resettlement of refugees has also been reduced to politics on both local and international scale. Governance and policies reflect politics. Questions such as the following are being asked: Who is making the resettlement appeal? What diplomatic aces are involved; and who holds them? If we do not get on board can it hurt our country on another unrelated topic? These

questions can go on. When a country makes a particular decision to resettle refugees, it also strategically thinks about how it affects other bilateral, trilateral and multilateral diplomatic relations. An example can be seen in the very recent Syrian situation. A special committee- the Syria Core Group (SCG) - was formed in 2013 at the UNHCR headquarters in Geneva to address this specific refugee problem.³⁰ In addition, the SCG was mandated to forge diplomatic relations with States which are not signatories to the *Refugee Convention*, in making resettlement exceptions for the Syrian refugees.³¹ For treaty member States, there was pressure to increase the quotas of resettlement spaces earlier agreed on.³² This example clearly illustrates why the global community responded so positively to the Syrian situation.

Another possible reason can be attributed to the ‘Africa is a country’ myth. This reason has been advanced in some quarters by people who claim that many people in the Global North actually think that Africa is just a country rather than a continent. This argument is pushed for justifying the few resettlement spaces allocated to African refugees. This myth has also been advanced by some high ranking elites as well. Arit John aptly states as follows: “Africa has an image problem. Or, put another way, the West has a perception problem. Because when we talk about Africa, more often than not, it's to talk about catastrophes and epidemics, and to conflate a single country with a continent.”³³ Some notable examples of this mix-up include the former US President, George W. Bush who on June 14, 2001, in *Gothenburg*, Sweden, stated that: "Africa is

³⁰ Carol Batchelor & Edwina O'Shea, “The Internationalisation of Resettlement: Lessons from Syria and Bhutan” (2017) 54 *Forced Migration Review* at 9.

³¹ Annelisa Lindsay, “Surge and Selection: Power in the Refugee Resettlement Regime” (2017) 54 *Forced Migration Review* at 12.

³² *Ibid.*

³³ Arit John, “Confusing a Country for a Continent: How we talk about Africa” *The Atlantic* (29 August, 2013), online: <<https://www.theatlantic.com/international/archive/2013/08/confusing-country-continent-how-we-talk-about-africa/311621/>>.

a nation that suffers from incredible disease."³⁴ Similarly, former US Vice-President, Joe Biden, in his 2014 speech at the joint United States-Africa Business Forum, made reference to the "nation of Africa."³⁵ This mistake by these notable US leaders is particularly important because of the political leadership the US enjoys directly or indirectly by many nations of the world.

Africa is however a continent of at least 54 countries.³⁶ It is three times the land mass of Europe with an area of 30,370,000 km² (11,730,000 square miles) compared to that of Europe which is 10,180,000 km² (3,930,000 square miles).³⁷ The population of Africa is 1,225,080,510; while that of Europe is 741,447,158.³⁸ It is therefore worrisome that some people should confuse Africa for a country.

Closely tied to the above is the issue of fraud. Corruption is a grave ill that exists everywhere in the world. On the African continent, corruption is so widespread that it is today one of the main banes of the continent. Many governments are so blatantly corrupt that the citizenry thinks this is the norm to emulate. Sadly, many systems and processes reflect this societal ill. Casasola writes about how evidence in 1999, revealed a large scale malfeasance. This involved some criminal networks colluding with some UNHCR officials in the Nairobi office of the Agency. These people repeatedly demanded and received money to influence the outcomes of refugee status determination proceedings and also placed premium price tags for resettlement spaces to various countries in the Global North. Resettlement was no longer a tool for protecting

³⁴ John Cochran, "Bush's Big Trip: Why Africa? Why Now?" *ABC News* online: <<https://abcnews.go.com/WNT/story?id=129596>>.

³⁵ Jessica Chasmar, "Joe Biden wants the 'nation of Africa to Prosper" *The Washington Times* (6 August 2014), online: <<https://www.washingtontimes.com/news/2014/aug/6/biden-wants-nation-africa-prosper/>>; <<https://www.youtube.com/watch?v=2U7S3Aq51II>>.

³⁶ *Ibid.*

³⁷ Online: <<https://en.wikipedia.org/wiki/Europe>>; <<https://en.wikipedia.org/wiki/Africa>>.

³⁸ *Ibid.*

vulnerable refugees, but was reserved for the highest bidder.³⁹ Resettlement like almost all human relationships greatly relies on trust. Integrity is paramount. Once trust is shattered, it is irredeemable. The sad consequences may have had a spiral effect as well. Some resettlement countries may have rightly felt duped for their goodwill. They no longer trust refugee numbers put forward for resettlement; not only from the affected country but across the entire African continent. This sad reality, may also contribute to the resettlement numbers seen today. The African refugees desperately in need of resettlement are excluded.

While I condemn all forms of corrupt practices, there is virtually no human society or State where there is no element of corruption. It may therefore be the inherent anti-Black racism in some of these countries that leads to further generalization of one isolated incident in one country, to the entire African continent.

All these reasons stated above are not mutually exclusive. Some may intersect with others. They raise substantial questions into the thoughts that generate into policy statements concerning resettlement numbers. In acknowledging the merits in some of these other plausible reasons, this thesis expresses a sense of hope that, anti-Black racism may not always be intended, as suggested by the statistical findings. This hope, in turn, creates an avenue for further discussions on how to better harness resettlement as a durable solution for refugees who are in dire need of it irrespective of racial considerations. Resettlement needs to be more strategically deployed, to reflect all the good intentions that the entire refugee protection regime was set up to achieve in the first place.

³⁹ Michael Casasola, "The Indochinese Refugee Movement and the Subsequent Evolution of UNHCR and the Canadian Resettlement Selection Policies and Practices (2016) 32:2 Refugee at 43; online: <<https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/40270/36409>> (based on UNHCR, Office of Internal Oversight Services (OIOS), *Investigation into Allegations of Refugee Smuggling at the Nairobi Branch Office of the Office of the United Nations High Commissioner for Refugees* (Geneva: OIOS, 2001) at 1.

CHAPTER 5: ANALYSIS, RECOMMENDATIONS AND CONCLUSION

“Racism strikes at the core of self-identity, eats away the heart, and casts a shadow on the soul. It is cruel and hurtful and alienating. It makes real all doubts about getting a fair chance in this society. Whether seen as a barrier or a hurdle, it is a serious obstacle imposed for a reason the victim has no control over, and can do nothing about.”¹

Anti-Black racism is not new. It has existed for generations. Blacks were invaded in their home countries. They were violently exploited and forcibly transported thousands of miles to Europe and North America as slaves. Consequently, many successive generations of Blacks were later born in Europe and North America. This thesis has tried to systematically trace anti-Black racism from the days of colonialism, through the dark period of slavery, post-slavery up till contemporary times, in order to connect it to current global refugee resettlement quotas and allocations.

Based on numerous literature cited in Chapter Two, this thesis recognizes that the law has been a vital tool in the perpetuation of racial bias on a global scale. The law aided colonialism. Law created boundaries that separated families and communities. It was the law that also legalized slavery of Black people. Through the instrumentality of the law, racism was established. Black people were excluded by many societies as inferior beings. This exclusion based on race continues to be propagated by various societal systems today across the Global North. The Blacks remain the primary targets of this institutionalized and systemic racial discrimination. Several reports even in recent times, have found that racism is still ongoing.

There are several accounts of many Black citizens of countries in the Global North being adversely targeted. This led to the research question of this thesis that sought to investigate

¹ McMurtry Roy & Curling Alvin, *The Review of the Roots of Youth Violence* Vol 1 (Toronto: Queen’s Printer for Ontario, 2008) at 42.

resettlement statistics from this standpoint. Will many of these countries of the Global North which have sought to exclude their Blacks citizens, now elect to resettle Black refugees?

There have definitely been major advancements in the war against racial discrimination on the global stage. This has been through the amendments and repeals of discriminatory laws, and the domestication of relevant international treaties by States. Despite the progress towards racial equality, as seen from the literature in Chapter Two, racism, and in particular, anti-Black racism continues. There is a new story in the news ever so often, while many others remain unreported. Many different advocacy groups have mobilized on various fronts to fight systemic anti-racial discriminations. Although these movements have been very helpful as support groups and public enlightenment campaigns, they have not been able to right many of these subsisting wrongs against racialized people.

It would also appear that the major advancements in the fight against racial discrimination have mostly succeeded in pushing overt racism underground. Racism is now covert. Racial discrimination in this sense has the “effect of dehumanizing and objectifying people as less deserving of treatment.”² A common thread in all the articles in the latest edition of Canadian's Journal on Refugees, titled *Refuge*, sees race not only as a “discreet variable for consideration but as part of an embedded structure of oppression in which the racialized refugee regime is generated and reproduced.”³ This proves that racial discrimination continues in many subtle ways in the global refugee protection regime. This thesis further extends this proposition by arguing that the global refugee resettlement regime is therefore not an exception. Racism that

² Christopher Kyriakides et al, “Introduction: The Racialized Refugee Regime” (2019) 35:1 *Refugee* at 4.

³ *Ibid* at 5.

has been identified in the administration of global refugee protection also runs through the resettlement process as well.

CRT aims to uncover “ongoing dynamics of racialized power, and it’s embeddedness in practices and values which have been shorn of any explicit, formal manifestations of racism.”⁴ This is in accordance with Vizkelely’s definition of ‘adverse effect discrimination,’⁵ which she describes as “common to find unequal treatment in covert form lying behind a camouflage of pretext...It is in its silence towards one particular factor that this definition is the most eloquent.”⁶ Is the ‘unequal treatment’ Vizkelely refers to, similar to the resettlement quotas as allocated by the resettlement countries? Although there is nothing expressly written in any of the individual country chapters on resettlement that is indicative of anti-Black racism, this thesis has however argued that the ‘silence’ of many resettlement States to the plight of Black refugees, as displayed by their zero or very low percentage quotas, is tantamount to eloquently expressing their continued desires to further exclude Black people from their countries.

Lopez predicts a racial future where a hierarchical structure will continue to exist.⁷ He sees it characterized by White people maintaining a superior class at the top of the hierarchy, while Blacks will remain at the bottom. Interestingly, he speaks about the integration of other non-Black racial minority groups with the White group. This he says will result in the emergence of just two races in the world - the “Blacks and non-Blacks.”⁸ Lopez’s analysis of racial expectations seems to already play out in the current resettlement narrative as shown in the

⁴ Kimberle Crenshaw et al (eds), *Critical Race Theory: The Key Writings that Formed the Movement* (New York: The New Press, 1995) at 60 [CRT Key Writings]; Aylward, *supra* note 37 at xxix.

⁵ Beatrice Vizkelely, *Proving Discrimination in Canada* (Toronto: Carswell, 1987) at 60.

⁶ *Ibid.*

⁷ Ian Haney Lopez, *White by Law: The Legal Construction of Race* revised & updated, 10th anniversary ed (New York: New York University Press, 2006) at 145-47.

⁸ *Ibid* at 145.

literature and statistical findings. Resettlement was welcome when it was used for the benefit of only European refugees. With refugees no longer coming from Europe, the Lopez narrative seems to further explain the ‘preference’ of resettling refugees from other regions of the world to Black refugees from Africa.

Canadian Context

Canada today is a bilingual, multicultural and multiracial country. It differs from many other colonized countries of the world. This is due to the settler-colonialism that still exists. In many countries which were forcefully colonized by the Europeans, at some later time, power was relinquished and given back to the Indigenous peoples of the lands; while the Europeans returned home to Europe. The history of North America and Oceania, in relation to colonialism differs in this respect. Canada today, has a similar history with the United States, Australia and New Zealand in respect to settler-colonialism.

It is also the opinion of this thesis however, that Canada has refused to be entirely defined by its dark past of anti-Black racism. There have been several conscious attempts in recent times to stem this evil tide. The several reports by independent bodies of inquiry in addition to the *Access to Information Act*,⁹ display some transparency in governance; and the leadership’s commitment to the new fight for racial equality of all persons. This fight is proactively led by the top echelon of the current liberal government of Canada. Acknowledgement of an ill is an important step to redemption. It is therefore a good thing that Canada is calling out this ill at the top level of government. The popular address given by the Honourable Prime Minister, Justin Trudeau, in London, United Kingdom, in 2015, titled “Diversity is Canada’s Strength,”¹⁰ readily

⁹ RSC 1985, c A-1.

¹⁰ Justin Trudeau, Prime Minister of Canada, “Diversity is Canada’s Strength” (26 November 2015), online: <<https://pm.gc.ca/eng/news/2015/11/26/diversity-canadas-strength>>.

comes to mind. The commitment of this current government is unambiguously displayed in the appointment of Ahmed Hussen MP, who is not only a former refugee, but also a Black man, as its federal minister for Immigration, Refugees and Citizenship since January 10, 2017.¹¹

On March 28, 2019, the Canadian Foreign Affairs Minister, Chrystia Freeland, while addressing the United Nations Security Council called out white supremacist ideology, in the wake of the Christchurch, New Zealand mosques massacre. She was quoted as saying that “she felt a personal responsibility to denounce white supremacist attacks as the foreign minister of a majority white and majority Christian country.”¹² The Minister also referred to white supremacy and Islamophobia as among the “gravest threats”¹³ confronting the world today. She stated further that “Neo-Nazis, white supremacists, ‘incels,’ nativists and radical anti-globalists who resort to violent acts are a threat to the stability of my country and countries around the world.”¹⁴ The Minister further challenged other States’ government to call these ills out for what they are “racists act of terrorism.”¹⁵ She offered praises and support for the New Zealand Prime Minister, who was unequivocal about her condemnation of the white supremacist’s rhetoric in the wake of the mosques’ shootings as well.¹⁶ In Minister Freeland’s words, I find comfort and hope.

Echoing similar sentiments to that of the Foreign Minister, the Canadian Security Intelligence Service (CSIS) Chief, David Vigneault, also decried white supremacist ideologies. The spy chief ranked white extremism in the same class as espionage and foreign interference,

¹¹ Online: <https://en.wikipedia.org/wiki/Ahmed_Hussen>.

¹² Carl Meyer, “Violent White Supremacists Threaten Canada’s Stability, Says Freeland” *National Observer News* (28 March 2019), online: <<https://www.nationalobserver.com/2019/03/28/news/violent-white-supremacists-threaten-canadas-stability-says-freeland>>.

¹³ “Neo-Nazism and Islamophobia among the ‘Gravest Threats’ Facing the World, Freeland tells UN” *CBC News* (28 March 2019), online: <<https://www.cbc.ca/news/politics/white-supremacist-nazi-islamophobia-1.5076033>>.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

which he claimed are the major areas of concern to CSIS currently.¹⁷ These are several notable instances where the Canadian leadership has stood up for equality of all persons irrespective of race and other forms of diversity. These bring great comfort and hope to all people of colour everywhere whether they are refugees or not.

This thesis is forward looking. As much as historical analyses are important in understanding certain trajectories, what is more important however, is where the historical knowledge takes us. Despite the dark era of anti-Black racism in Canada, there are several strategic policies and practices currently being undertaken in the country to stem racial inequalities on many fronts. Some have already been highlighted above. It is commendable that there are several fora where these discussions are welcomed and championed by top government officials. An example is the anti-racism initiatives currently being propagated nationally. This is led by the Federal Minister of Canadian Heritage and Multiculturalism, Honourable Pablo Rodriguez and the Parliamentary Secretary for Heritage and Multiculturalism, MP Gary Anandasangaree.

These positive sentiments as expressed above, by Canadian officials have contributed to why the country stands out in leadership, even in the face of global aggression to peoples of colour everywhere. This Canadian stance is yet to be found in commensurate level by other resettlement countries, whether the United States or other countries in Europe. This Canadian position is remarkable and worthy of commendation.

It must be recalled that it was this benevolence on the part of the Canadian civil society, through individuals and organized groups that played a huge role in the unprecedented

¹⁷ Catharine Tunney, "CSIS Dealing with Right-Wing Extremism 'More and More' Says Spy Chief" *CBC News* (10 April 2019), online: <<https://www.cbc.ca/news/politics/csis-right-wing-white-supremacy-1.5092304>>.

resettlement of large numbers of Indochinese refugees in the years between the 1970s and the 1990s. The Canadian citizenry collectively changed the racial trajectory of the country by innovatively creating several different pathways to addressing resettlement of refugees of colour from the Global South. Little wonder that the UNHCR's Nansen Medal was awarded to the people of Canada in 1986 in recognition of this great feat.¹⁸ Canada remains the only country of the world till date, to receive this medal.

A common practice to mark the World Refugee Day on June 20 every year is for UNHCR to release its global 'Figures at a Glance' for the previous year, a day prior. The 2018 figures just released show that, out of the 92,400 refugees that were resettled in the year 2018, Canada alone resettled 28,100.¹⁹ This is the first time Canada is resettling more refugees than the United States; which resettled 22,900 refugees.²⁰ Since 1980, the U.S. has always resettled the highest number of refugees annually.²¹ This reduction in the U.S. number is largely due to the stance taken by its current government led by President Donald Trump, who has undertaken to cut down the country's resettlement numbers in breaking with the country's past tradition.²² This recent resettlement statistics as released by UNHCR, only confirms the current global leadership position Canada now occupies, in respect of refugee protection amid racial inclusion and diversity.

¹⁸ Michael Casasola, "The Indochinese Refugee Movement and the Subsequent Evolution of UNHCR and the Canadian Resettlement Selection Policies and Practices (2016) 32:2 Refugee at 42; online: <<https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/40270/36409>>.

¹⁹ The Canadian Press, "Canada Resettled More Refugees than Any Other Country in 2018" *CBC News* (20 June 2019), online: <<https://www.cbc.ca/news/politics/canada-resettled-most-refugees-un-1.5182621>>.

²⁰ "Canada Resettled More Refugees than Any Other Country in 2018" *BBC News* (19 June 2019), online: <<https://www.bbc.com/news/world-us-canada-48696974>>.

²¹ *Ibid.*

²² *Ibid.*

In terms of Canada's resettlement figures, the number earmarked for Africa is not anywhere close to that allocated to the Middle East. In the recent statistics shown in Tables B and C, Canada allocated 8,490 spaces to Africa and 17,340 to the Middle East. This disparity may have already been explained in Chapters Two and Three, as a reflection of several factors among which is the inherent racial bias in the GAR and BVOR resettlement programs.

It is also noteworthy from the 2018 statistics analyzed in Chapter Four that, except for the US, Canada had the highest allocation for resettling African refugees globally.²³ Canada is also the only resettlement country that has some quota allocated to all the refugee hotspots around the world regardless of race. This positively reflects the Canadian's racial inclusivity.

Recommendations

This thesis concludes with several recommendations to advance existing research and advocacy on resettlement, anti-Black racism and accountability.

For social injustices to be effectively tackled, collective effort is required. Everyone has a role to play in changing the racial stereotyping in our individual and collective spaces. Wang advocates for a proactive societal effort to address racism. She warns that if the fight against racial discrimination is left for only a few, white dominance will continue to perpetuate itself naturally even in the legal profession.²⁴ The education researcher, Michelle Stack, recently said that "[a]ll of us must do anti-racist and anti-oppressive work"²⁵ in all spaces we find ourselves without leaving this social justice job to only racialized and Indigenous people.

²³ See Tables B & C.

²⁴ Lu-in Wang, *Discrimination by Default: How Racism Becomes Routine* (New York: New York University Press, 2006) at 13.

²⁵ "Charlottesville: White Educators Need to Fight Racism Everyday" *The Conversation* (15 August 2017), online: <<https://theconversation.com/charlottesville-white-educators-need-to-fight-racism-every-day-82550>>.

Race does matter in society. “The very notion of blindness about colour constitutes an ideological confusion at best, and denial at it’s very worst.”²⁶ Problems are not solved by merely denying that they exist. They need to be confronted headlong. They require intellectual brainstorming before a resolution that agrees to all is reached.

A colour blind future although desirable requires painstaking efforts from everyone. We need to create communities in our individual and collective spaces involving “negotiating real divisions of considering boundaries...and of pondering our differences before we can ever agree on the terms of our sameness.”²⁷ This goal requires more work. Without this foundational work, colour blindness will never yield the desired result of racial inclusivity.

In *R v. Jackson*,²⁸ Justice Nakatsuru recognizes his higher duty to show judicial equality to all Canadians. He admits that differential standards have been applied by the Canadian criminal justice system which has been detrimental to African Canadians. He says: “I have been asked to do something about changing the law. So I have had to think about this.”²⁹ By this statement, the learned judge admits that judges indeed play a role in the law making process. He impliedly, also acknowledges that judges need to be social justice advocates. Social justice efforts should be made by all people, racialized or otherwise.

Another important fact learned during this research which culminated in this thesis is that, there is a dearth of information about certain refugee situations on the African continent. Some of these refugee situations are almost unknown. Some African refugee situations are forgotten by the rest of the world. In my prologue, I admitted knowing almost nothing about

²⁶ Patricia J. Williams, *Seeing a Colour-Blind Future: The Paradox of Race* (London, UK: Virago Press, 1997) at 2.

²⁷ *Ibid* at 4.

²⁸ 2018 ONSC 2527.

²⁹ *Ibid* at para 6.

practical refugee situations despite being already a practicing lawyer. Similarly, in the written feedback received from the committee which reviewed my conference paper titled: “Resettlement of Refugees and Race,” presented at Carleton University,³⁰ a portion says:

Can sponsors be blamed for choosing specific groups of refugees if they are not aware or informed about other refugee situations in the world? (Even I did not know that Kakuma or Dadaab refugee camps existed up until a few years ago). If sponsors are making decisions based on race, what explains the fact that some BVOR sponsors who originally planned to sponsor Syrian families *chose to sponsor African families instead when there were no Syrian families on the list* (for example, my BVOR sponsorship group chose a Somali Bantu family, and other groups I know sponsored families from Eritrea and Congo through BVOR)?³¹ (The italicized emphasis are mine.)

Since receiving this feedback, I have had course to reflect on the above quote over and over again. It was for me both humbling and insightful. For an erudite university professor in the field of migration studies, to admit that he also lacked specific knowledge of some African refugee populations until recently, humbled me. Are the above quoted words that I have italicized for emphasis, referring to the fact that Africans deserve the remnants of the bounty?

If many African scholars and legal practitioners like me, know very little, how can it be justified to expect more from scholars in the west? One fact remains obvious. There is need for more enlightenment and public awareness. It is hoped that this thesis will contribute meaningfully to the public discourse and enlightenment on the topic. As many of these discussions take place, the media easily becomes more sensitized. This will in turn, improve publicity on the subject.

There is a great need for more social justice oriented people generally; and lawyers in particular. Chinua Achebe says, “[u]ntil the lions have their own historians, the history of the

³⁰ The Diaspora and Migration Student Research Conference, Carleton University, Ottawa, 8 February, 2019.

³¹ Written feedback on my conference paper received via email dated 10 February 2019 from an unnamed faculty reviewer of the Migration and Diaspora Studies Initiative of Carleton University, Ottawa.

hunt will always glorify the hunter.”³² This means that the existing history books about Africa as written by the Europeans are biased. These historical and literary works paint Black people as bad. Achebe’s proverb is supported by Audre Lorde who speaks as a black woman in the academia. She titles her article: “The master's tools will never dismantle the master's house.”³³ She questions the logic of how the “tools of a racist patriarchy are used to examine the fruits of that same patriarchy.”³⁴ They are both doomed to fail from the onset. There are so many learned scholars of colour all over the world. These people are in positions of power. There is a need for them to contribute significantly to several racial discussions and not remain complicit in the perpetuation of racism. If scholars of colour fail in this regard, the re-invention of the wheel of white dominance will continue unabatedly.

In furtherance of the above, I recently became aware of an African Research Group. It is part of the global Kaldor Centre’s Emerging Scholars Network. It is committed to International Refugee Law and domiciled at the University of New South Wales, Sydney, Australia. This research group brings together scholars from around the world who are committed to different aspects of the refugee situation in Africa. I willingly joined the group. There is a need for greater collaborations by racialized scholars in groups such as this. This in turn, can lead to significant impact in education and public enlightenment on the specific dynamics of the refugee situations in Africa. People especially African scholars need not shy away from these pertinent topics. As Wang puts it, since racism is already normalized, it can only be overturned by conscious effort.³⁵

³² John Williams, “Chinua Achebe and the ‘Bravery of Lions’” *New York Times* (22 March 2013), online: <<https://artsbeat.blogs.nytimes.com/2013/03/22/chinua-achebe-and-the-bravery-of-lions/>>.

³³ Audre Lorde, “The Master’s Tools Will Never Dismantle the Master’s House” *Sister Outsider: Essays and Speeches* (Ed. Berkeley, CA: Crossing Press, 2007) at 110-14.

³⁴ *Ibid.*

³⁵ Wang *supra* note 24 at 13.

There is room for more advocates, researchers and other stakeholders to get involved in this relevant discussion.

The fact that racial discrimination even in the resettlement process is arguably the norm, it does not mean that it should be allowed to continue. There is a need for clear signs to be displayed by everyone that we have moved away from the dark practices of racism. Laws and policies should reflect this change. There is also a need to have and implement serious sanctions for racial discrimination to serve as deterrence to others.

There are many White people today who courageously challenge all forms of discrimination including race-based discrimination. These people recognize and are eager to “unpack the[ir] white privilege.”³⁶ They understood that racism goes beyond “individual acts of meanness [to] invisible systems conferring dominance on [the white] group”³⁷ that is already so privileged. These White people should be celebrated. There is room for so much more White people to be engaged in this fight. Although resettlement can never be a right to be claimed by anyone, it is noble for people to take some time to reflect on how equitable the current global resettlement quotas are, as allocated to the different regions of the world, and judge for themselves.

This research also urges UNHCR, to be more wary of the positionality of the different races of refugees shortlisted for resettlement as well. The agency can recommend a more racially equitable quota to resettlement States and other partners. This can help deal with some blind spots as already identified. UNHCR needs to do more to truly reflect the non-discriminatory

³⁶ Peggy McIntosh, “White Privilege: Unpacking the Invisible Knapsack” (July/ August 1989) *Peace and Freedom Magazine* at 10-12; online: <<https://nationalseedproject.org/Key-SEED-Texts/white-privilege-unpacking-the-invisible-knapsack>>.

³⁷ *Ibid.*

intentions of the many international treaties of which the United Nations remains the chief custodian. UNHCR should therefore not be complicit in this racial discriminatory practice as well. Silence on the part of UNHCR staff in many of these situations, may just be the fuel to keep the fire of racial injustice burning.

UNHCR is best placed to use its good offices to diplomatically bridge these racial divides in how States respond to its PGRN. For instance, the way and manner the top echelon of UNHCR formed and advocated for the Syria Core Group (SCG), and the subsequent reaction by the global community are very highly commendable. This process can be expanded to include other refugee populations elsewhere.

Garnier, Sandvik and Jubilut recommend extensive multidisciplinary research of specific refugee populations in the Global South.³⁸ They say as follows:

Pursuing this research agenda would give greater insight into refugee resettlements' entrenchment in global inequality but also indicate some steps to reduce manifestations of said inequality. We are, however, aware that much more needs to be done to tackle global inequality: overcoming it would in fine means that refugee resettlement is not necessary anymore. We have perhaps never been further from such situation.³⁹

Another important recommendation that UNHCR can also follow up with is to enhance accountability within its processes and protocols on resettlement. The Agency in maintaining its global integrity has been quite transparent. In addition to transparency however, there is a greater need for accountability in carrying out its mandate of international protection of all refugees irrespective of racial demographics. van Selm says that all "resettlement countries are also concerned that resettlement should be well managed by all actors involved for the benefit of

³⁸ Adele Garnier, Kristin Bergtora Sandvik & Lyra Jubilut, "Introduction: Refugee Resettlement as Humanitarian Governance: Power Dynamics" In Adele Garnier, Kristin Bergtora Sandvik & Lyra Jubilut (eds) *Refugee Resettlement: Power Politics and Humanitarian Governance* (New York: Berghahn Books, 2018) at 15-16.

³⁹ *Ibid* at 17.

all.”⁴⁰ Garnier, Sandvik and Jubilut agree that resettlement is an important refugee protection tool which has largely been unaccountable.⁴¹ They explain that since resettlement involves humanitarian governance, care and control throughout the process should be paramount.⁴² The authors observe that since all resettlement processes are costly and permeated by inequality,⁴³ accountability using analytical approaches is recommended.

In relation to accountability, Jacobsena and Sandvik suggest that UNHCR employs the use of “accountability technologies.”⁴⁴ They opine that new technological solutions would improve management of all refugee protection processes globally.⁴⁵ Both authors advocate the use of “results-based management (RBM), biometrics and cash-based interventions,”⁴⁶ as the way forward in the Agency’s international protection efforts.

The Law, especially in letter and practice should not tacitly support existing structures of racial supremacy or domination. This ultimately leads to racial discrimination. There is always need for authentic law reform at all levels. Dean Spade suggests a bottom-up mobilization strategy instead of the top-down approach spelling out “empty declarations of equality.”⁴⁷ Anti-Black racism is currently so deep-seated. It explodes when there are practical issues which have significant benefits; such as the resettlement of refugees. At such points, individual and

⁴⁰ Joanne van Selm, “Strategic Use of Resettlement: Changing the Face of Protection?” (2004) 22:1 Refugee at 39.

⁴¹ Garnier, Bergtora & Jubilut, *supra* note 36 at 2.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Katja Lindskov Jacobsena & Kristin Bergtora Sandvik, “UNHCR and the Pursuit of International Protection: Accountability through Technology?” (2018) 39:8 *Third World Quarterly* at 1508; DOI: <https://doi.org/10.1080/01436597.2018.1432346>.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Spade Dean, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* Revised & Expanded ed (Durham: Duke University Press, 2015) at 94.

collective racial biases become easily exposed. There is always room for more sensitization by grass-root groups.

Conclusion

To effectively advocate for social justice, critiquing the *status quo* alone is insufficient. It is important while also engaging in critiques, to “also search for new energizing visions of how law should and might move forward.”⁴⁸ This is a challenge that this thesis takes to heart. What affects any person ultimately affects me because; I am a part of humanity. All that may be truly important is as Justice Nakatsuru puts it: “[t]ake the first step in faith. You don't have to see the whole staircase, just take the first step.”⁴⁹ Martin Luther King Jr., adds: “Our lives begin to end the day we become silent about the things that matter.”⁵⁰ This thesis culminates in my personal first few steps at advocating for racial equality and other social justice initiatives.

This thesis acknowledges UNHCR's great humanitarian efforts in addressing the overwhelming global refugee crisis it currently faces. The Agency has remained undaunted in rising up to this challenge based on the support offered by these resettlement countries and other global partners. These countries, which have not just looked away from the gross tragedies confronting other people elsewhere in the world, also deserve commendation. A very popular proverb says “many hands make light work.” This research humbly reaches out to more countries, organizations and well-meaning individuals to get on board to help out as well. No effort in aid of vulnerable refugees is ever too small.

Many states, much like Canada, take pride in being referred to as countries which honour human rights. It is therefore hoped that the ripple effect from some of these positive steps already

⁴⁸ William P. Quigley, “Letter to a Law Student Interested in Social Justice” (2007) 1:1 DePaul J for Social Justice 7 at 17.

⁴⁹ *R. v. Jackson*, *supra* note 28 at para 1 (Justice S. Nakatsuru quoting Dr. Martin Luther King Jr.).

⁵⁰ Martin Luther King Jr., “I have a Dream: Writings and Speeches that Changed the World” online: <<https://www.goodreads.com/quotes/6407-our-lives-begin-to-end-the-day-we-become-silent>>.

being taken by Canada can be emulated on the global stage by other countries in equitably resettling refugees irrespective of race and indeed other spheres of human endeavours.

Quigley narrates the story of a law school student, who was among the hundreds who volunteered to help out during the winter holidays, in the aftermath of Hurricane Katrina in New Orleans. While sharing their different experiences afterwards, this student with so much emotion said that the experience reminded him of why he went to law school in the first place: “To help people and do his part to change the world. You know, he said quietly, the first thing I lost in law school was the reason that I came.”⁵¹ This statement resonates with me. I do not want to attain a higher law degree only to get lost in the process. I understand that law is not synonymous with justice. This research has indeed taught me about racial justice. Importantly, I have learnt that standpoint helps perception. The former Chief Justice of Ontario, the Honourable Roy McMurtry, and the Canadian politician of Jamaican descent, Dr. Alvin Curling wrote: “In order to really get to know someone you are judging, you must put yourselves in the shoes of that person. And stand a while in them.”⁵² If all people truly do assume the standpoints of others before making those salient life changing decisions, like resettlement, they will really be more humane in the decision-making process. They will comprehend a little more the difficulties of “being black in a white world.”⁵³ People will generally learn to be more accommodating and even welcome racial diversity and inclusion of all peoples.

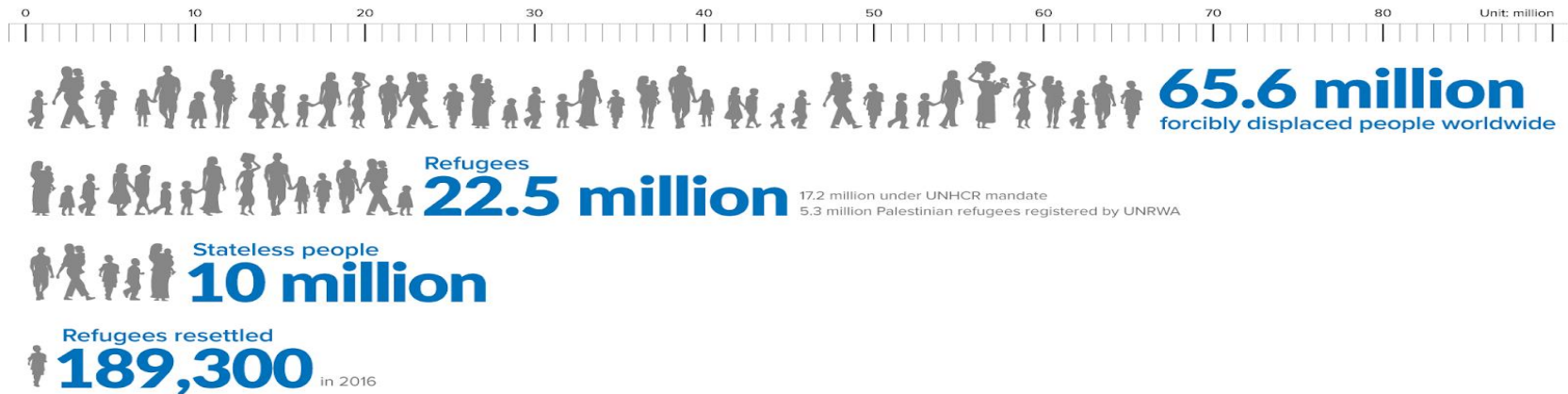
⁵¹ Quigley, *supra* note 48 at 8.

⁵² McMurtry & Alvin, *supra* note 1 at 42.

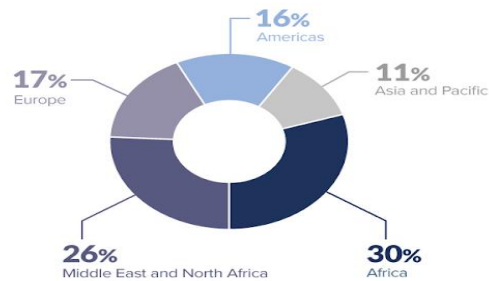
⁵³ *R v Jackson* *supra* note 28 at para 170.

LIST OF APPENDICES

Appendix A: UNHCR's 2016 Figures at a Glance



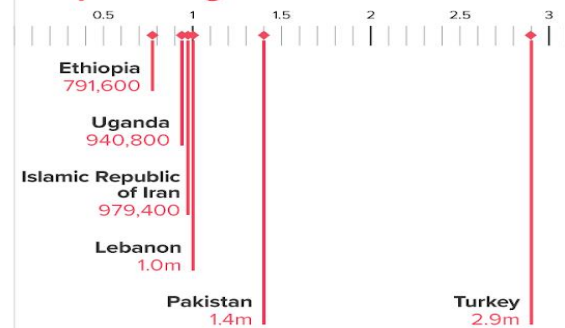
Where the world's displaced people are being hosted



55% of refugees worldwide came from three countries



Top hosting countries



28,300 people
a day forced to flee their homes
because of conflict and persecution

10,966 staff
UNHCR employs 10,966 staff
(as of 30 June 2017)

130 countries
We work in 130 countries
(as of 30 June 2017)

We are funded almost entirely by
voluntary contributions, with 87 per
cent from governments and the
European Union.

Source: UNHCR / 19 June 2017



Appendix B: UNHCR's 2017 Figures at a Glance

68.5 million forcibly displaced people worldwide



Internally Displaced People
40 million

Refugees
25.4 million

19.9 million under UNHCR mandate
5.4 million Palestinian refugees registered by UNRWA

Asylum-seekers
3.1 million

Where the world's displaced people are being hosted

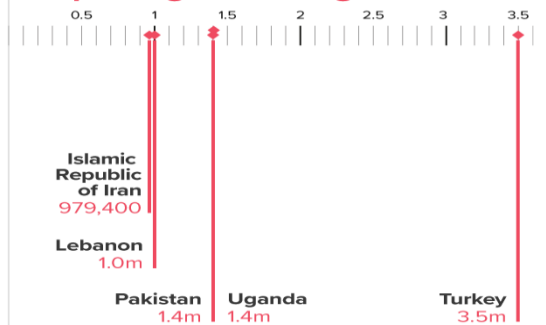


85 per cent of the world's displaced people are in developing countries

57% of refugees worldwide came from three countries



Top refugee-hosting countries



10 million stateless people



102,800 Refugees resettled

44,400 people

a day forced to flee their homes because of conflict and persecution

11,517 staff

UNHCR employs 11,517 staff (as of 31 May 2018)

128 countries

We work in 128 countries (as of 31 May 2018)

We are funded almost entirely by voluntary contributions, with 87 per cent from governments and the European Union and 10 per cent from private donors

Source: UNHCR / 19 June 2018



Appendix C: Web links to all Resettlement Country Chapters

S/No.	Country	Sources
1	Argentina	https://www.unhcr.org/4b7bc3a19.html
2	Australia	https://www.unhcr.org/3c5e542d4.html
3	Belgium	https://www.unhcr.org/5278adfb9.html
4	Brazil	https://www.unhcr.org/4e2d622713.html
5	Bulgaria	https://www.unhcr.org/5bf2cf0a4.html
6	Canada	https://www.unhcr.org/3c5e55594.html
7	Chile	https://www.unhcr.org/3c5e576c6.html
8	Czech Rep.	https://www.unhcr.org/4e2d65a79.html
9	Denmark	https://www.unhcr.org/3c5e57b07.html
10	Finland	https://www.unhcr.org/3c5e57f07.html
11	France	https://www.unhcr.org/5322ca479.html
12	Germany	https://www.unhcr.org/5162b3bc9.html
13	Iceland	https://www.unhcr.org/3c5e58384.html
14	Ireland	https://www.unhcr.org/3cac29da4.html
15	Netherlands	https://www.unhcr.org/3c5e5925a.html
16	New Zealand	https://www.unhcr.org/3c5e59d04.html
17	Norway	https://www.unhcr.org/3c5e59835.html
17	Portugal	https://www.unhcr.org/4e92a0cc9.html
18	Romania	https://www.unhcr.org/4e2d64679.html
20	Sweden	https://www.unhcr.org/3c5e5a219.html
21	UK	https://www.unhcr.org/40ee6fc04.html
22	USA	https://www.unhcr.org/3c5e5a764.html
23	Uruguay	https://www.unhcr.org/4e53cd2c9.html

Appendix D: Dates the country chapters were last revised

Country Chapters

- [Argentina](#) (June 2013 revision)
- [Australia](#) (May 2018 revision)
- [Belgium](#) (2018 revision)
- [Brazil](#) (July 2013 revision)
- [Bulgaria](#) (2018 revision)
- [Canada](#) (2018 revision)
- [Chile](#) (January 2002 revision)
- [Czech Republic](#) (July 2018 revision)
- [Denmark](#) (March 2016 revision)
- [Finland](#) (October 2018 revision)
- [France](#) (November 2018 revision)
- [Germany](#) (2018 revision)
- [Iceland](#) (April 2016 revision)
- [Ireland](#) (December 2018 revision)
- [Netherlands](#) (2018 revision)
- [New Zealand](#) (May 2018 revision)
- [Norway](#) (2018 revision)
- [Portugal](#) (January 2019 revision)
- [Romania](#) (August 2016)
- [Sweden](#) (2018 revision)
- [United Kingdom](#) (2018 revision)
- [United States of America](#) (2018 revision)
- [Uruguay](#) (July 2016 revision)

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